# MONTANA

# CODE

# ANNOTATED

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## Special Session

## November 1993

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# MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

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# OFFICERS AND MEMBERS OF THE MONTANA SENATE
# 1993

50 Members

30 Democrats — 20 Republicans

## OFFICERS

| | |
|---|---|
| President | Fred Van Valkenburg |
| President Pro Tempore | J.D. Lynch |
| Majority Leader | Greg Jergeson |
| Majority Whip | Steve Doherty |
| Minority Leader | Bruce Crippen |
| Minority Whip | John Harp |
| Secretary of the Senate | Claudia Clifford |

## MEMBERS

| Name | Residence or Mailing Address | Dist No | Party |
|---|---|---|---|
| Aklestad, Gary C. | PO Box 32, Galata MT 59444 | 6 | Republican |
| Bartlett, Sue | 416 N Beattie, Helena MT 59601 | 23 | Democrat |
| Beck, Thomas A. (Tom) | 651 Greenhouse Rd, Deer Lodge MT 59722 | 24 | Republican |
| Bianchi, Don | 490 Secretariat Circle, Belgrade MT 59714 | 39 | Democrat |
| Blaylock, Chet | 502 3rd Ave, Laurel MT 59044 | 43 | Democrat |
| [1]Brenden, John | Box 970, Scobey MT 59263 | 10 | Republican |
| Brown, Robert (Bob) | 333 Cougar Trail, Whitefish MT 59937 | 2 | Republican |
| Bruski-Maus, Betty | PO Box 234, Wibaux MT 59353 | 12 | Democrat |
| Burnett, James H. (Jim) | PO Box 4460, Luther MT 59051 | 42 | Republican |
| Christiaens, B.F. (Chris) | 709 4th Ave N, Great Falls MT 59401 | 18 | Democrat |
| Crippen, Bruce D. | PO Box 80747, Billings MT 59108-0747 | 45 | Republican |
| Devlin, Gerry | PO Box 186, Terry MT 59349 | 13 | Republican |
| Doherty, Steve | 1531 3rd Ave SW, Great Falls MT 59404 | 20 | Democrat |
| Eck, Dorothy | 10 W Garfield, Bozeman MT 59715 | 40 | Democrat |
| Forrester, Gary | 2527 Gardiner St R 8, Billings MT 59101 | 49 | Democrat |
| Franklin, Eve | 4021 4th Ave S, Great Falls MT 59405 | 17 | Democrat |
| Fritz, Harry | 1817 Daniel Dr, Missoula MT 59802 | 28 | Democrat |
| Gage, Delwyn | PO Box 787, Cut Bank MT 59427 | 5 | Republican |
| Grosfield, Lorents | HC 87, Box 2145, Big Timber MT 59011 | 41 | Republican |
| [2]Hager, Connye | 150 Norris Ct, Billings MT 59105 | 48 | Republican |
| [3]Hager, Thomas O. (Tom) | 150 Norris Ct, Billings MT 59105 | 48 | Republican |
| Halligan, Mike | 201 W Main Suite 310, Missoula MT 59802 | 29 | Democrat |
| Harding, Ethel M. | PO Box 251, Polson MT 59860 | 25 | Republican |
| Harp, John G. | 53 Willow Dr, Kalispell MT 59901 | 4 | Republican |
| Hertel, John R. | Rte 1, PO Box 30, Moore MT 59464 | 15 | Republican |
| Hockett, Bob | Shambo Rte, Box 306, Havre MT 59501 | 7 | Democrat |
| Jacobson, Judy H. | 330 Blacktail Canyon Rd, Butte MT 59701 | 36 | Democrat |
| Jergeson, Greg | RR 71, Box 8, Chinook MT 59523 | 8 | Democrat |
| Keating, Thomas F. | PO Box 20522, Billings MT 59104 | 44 | Republican |
| Kennedy, Jr., John (Ed) | 5567 Montana Hwy 35, Kalispell MT 59901 | 3 | Democrat |
| Klampe, Terry | PO Box 368, Florence MT 59833 | 31 | Democrat |
| Koehnke, Francis | PO Box 692, Townsend MT 59644 | 16 | Democrat |
| Lynch, John (J.D.) | 527 W Mercury, Butte MT 59701 | 35 | Democrat |
| McClernan, Henry | 3 N Excelsior, Butte MT 59701 | 34 | Democrat |
| Mesaros, Kenneth (Ken) | 2191 Millegan Rd, Cascade MT 59421 | 21 | Republican |
| [4]Nathe, Dennis G. | PO Box 4, Redstone MT 59257 | 10 | Republican |

| | | | |
|---|---|---|---|
| Pipinich, Bob | 4430 Hwy 200 Marshall Grade, Missoula MT 59802 | 33 | Democrat |
| Rea, Jack (Doc) | PO Box 1106, Helena MT 59624 | 38 | Democrat |
| Rye, David | 2211 Oak St, Billings MT 59102 | 47 | Republican |
| Stang, Barry (Spook) | 142 Montana Hwy 135 S, St. Regis MT 59866 | 26 | Democrat |
| Swift, Bernie A. | 236 Rose Ln, Hamilton MT 59840 | 32 | Republican |
| Swysgood, Charles (Chuck) | 506 S Atlantic, Dillon MT 59725 | 37 | Republican |
| Toews, Daryl | SR 266 Box 34, Lustre MT 59225 | 9 | Republican |
| Towe, Thomas E. (Tom) | 2525 Sixth Ave N, Billings MT 59101 | 46 | Democrat |
| Tveit, Larry J. | RR 1, Box 1475, Fairview MT 59221 | 11 | Republican |
| Van Valkenburg, Fred R. | 112 University, Missoula MT 59801 | 30 | Democrat |
| Vaughn, Eleanor L. | 251 Mahoney Rd, PO Box 45, Libby MT 59923 | 1 | Democrat |
| Waterman, Mignon | 530 Hazelgreen Place, Helena MT 59601 | 22 | Democrat |
| Weeding, Cecil F. | PO Box 78, Jordan MT 59337 | 14 | Democrat |
| Weldon, Jeff | 24460 Doney Rd, Arlee MT 59821 | 27 | Democrat |
| Wilson, William F. (Bill) | 1305 2nd Ave N, Great Falls MT 59401 | 19 | Democrat |
| Yellowtail, Bill | PO Box 308, Wyola MT 59089 | 50 | Democrat |

[1] Assumed Senator Nathe's position March 2, 1993.
[2] Assumed Senator Thomas Hager's position May 10, 1993.
[3] Deceased April 24, 1993.
[4] Deceased February 21, 1993.

# OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES

# 1993

100 Members

53 Republicans

47 Democrats

## OFFICERS

| | |
|---|---|
| Speaker | John Mercer |
| Speaker Pro Tempore | Marian Hanson |
| Majority Leader | Larry Hal Grinde |
| Majority Whip | Jim Rice |
| Minority Leader | Ted Schye |
| Minority Whip | Bill Strizich |
| Chief Clerk of the House | Marilyn Miller |

## MEMBERS

| Name | Residence or Mailing Address | Dist No | Party |
|---|---|---|---|
| Anderson, Shiell | Hayhook Ranch, Rte 85 Box 4251, Livingston MT 59047 | 81 | Republican |
| Bachini, Bob | 409 19th St, Havre MT 59501 | 14 | Democrat |
| Bardanouve, Francis | PO Box 367, Harlem MT 59526 | 16 | Democrat |
| Barnett, Joe | 204 N Davis, Belgrade MT 59714 | 76 | Republican |
| Barnhart, Beverly | 614 S 6th, Bozeman MT 59715 | 80 | Democrat |
| Benedict, Steve | PO Box 668, Hamilton MT 59840 | 64 | Republican |
| Bergman, Ellen | 1019 S Strevell, Miles City MT 59301 | 26 | Republican |
| Bergsagel, Ernest | HC 84, Box 8045, Malta MT 59538 | 17 | Republican |
| Bird, Joann T. (Jody) | 50 T-Bird Ln, Superior MT 59872 | 52 | Democrat |
| Boharski, William E. | PO Box 2965, Kalispell MT 59901 | 4 | Republican |
| Bohlinger, John C. | 2712 Virginia Ln, Billings MT 59102 | 94 | Republican |
| Brandewie, Ray | 25200 Hwy 35, Bigfork MT 59911 | 49 | Republican |
| Brooke, Vivian M. | 1610 Madeline Ave, Missoula MT 59801 | 56 | Democrat |
| [1]Brown, Dave | 3040 Ottawa, Butte MT 59701 | 72 | Democrat |
| Clark, Robert C. | PO Box 216, Ryegate MT 59074 | 31 | Republican |
| Cobb, John | PO Box 388, Augusta MT 59410 | 42 | Republican |
| Cocchiarella, Vicki | 535 Livingston Ave, Missoula MT 59801 | 59 | Democrat |
| Daily, Fred (Fritz) | 1057 W Steel, Butte MT 59701 | 69 | Democrat |
| Davis, Ervin | 604 N Main, Charlo MT 59824 | 53 | Democrat |
| DeBruycker, Roger | HC 77 Box 8, Floweree MT 59440 | 13 | Republican |
| Dolezal, Edward J. | 3236 Fifth Ave S, Great Falls MT 59405 | 34 | Democrat |
| Dowell, Tim | 46 West View Dr, Kalispell MT 59901 | 5 | Democrat |
| Driscoll, Jerry L. | 4344 Stone St, Billings MT 59101 | 92 | Democrat |
| Elliott, Jim | 100 Trout Creek Rd, Trout Creek MT 59874 | 51 | Democrat |
| Ellis, Jr., Alvin A. | Rte 1, Box 4840, Red Lodge MT 59068 | 84 | Republican |
| Endy, William R. (Bill) | 178 Kountz Rd, Whitehall MT 59759 | 74 | Democrat |
| Ewer, David | 1016 5th Ave, Helena MT 59601 | 45 | Democrat |
| Fagg, Russell | PO Box 176, Billings MT 59103 | 89 | Republican |
| Feland, Gary | 215 11th Ave N, Shelby MT 59474 | 12 | Republican |
| Fisher, Marjorie I. | Box 565, Whitefish MT 59937 | 3 | Republican |
| Foster, Mike | PO Box 126, Townsend MT 59644 | 32 | Republican |
| Galvin, Patrick G. | 105 29th Ave NW, Great Falls MT 59404 | 40 | Democrat |
| Gervais, Floyd (Bob) | PO Box 1810, Browning MT 59417 | 9 | Democrat |
| Gilbert, Bob | PO Drawer 1228, Sidney MT 59270 | 22 | Republican |
| Grady, Edward J. (Ed) | Star Route, Canyon Creek MT 59633 | 47 | Republican |
| Grimes, Duane | Gruber Estates, Box 81, Clancy MT 59634 | 75 | Republican |
| Grinde, Larry Hal | RR 3, Lewistown MT 59457 | 30 | Republican |

| | | | |
|---|---|---|---|
| Hansen, Stella Jean | 841 Woodford St, Missoula MT 59801 | 57 | Democrat |
| Hanson, H.S. (Sonny) | 2237 Green Terrace Dr, Billings MT 59102 | 87 | Republican |
| Hanson, Marian W. | PO Box 237, Ashland MT 59003 | 100 | Republican |
| Harper, Hal | 9 Comstock Rd, Helena MT 59601 | 44 | Democrat |
| Harrington, Dan W. | 1201 N Excelsior, Butte MT 59701 | 68 | Democrat |
| Hayne, Harriet | PO Box 285, Dupuyer MT 59432 | 10 | Republican |
| Herron, Jack R. | 360 5th Ave E N, Kalispell MT 59901 | 6 | Republican |
| Hibbard, Chase | 725 Madison, Helena MT 59601 | 46 | Republican |
| Johnson, John | 124 Gresham, Glendive MT 59330 | 23 | Democrat |
| Johnson, Royal C. | 2915 Illinois, Billings MT 59102 | 88 | Republican |
| Kadas, Mike | 922 Taylor, Missoula MT 59802 | 55 | Democrat |
| Kasten, Betty Lou | HC 77, Box A-14, Brockway MT 59214 | 28 | Republican |
| Keller, Vernon V. | HC 55, Box 355, Fishtail MT 59028 | 83 | Republican |
| Knox, Dick | HCR Box 14, Winifred MT 59489 | 29 | Republican |
| Larson, Don | PO Box 285, Seeley Lake MT 59868 | 65 | Democrat |
| Mason, Gary D. | 1368 Auction Way, Corvallis MT 59828 | 63 | Republican |
| McCaffree, Ed | PO Box 1354, Forsyth MT 59327 | 27 | Democrat |
| McCarthy, Bea | 1906 Ogden, Anaconda MT 59711 | 66 | Democrat |
| McCulloch, Scott T. | 611 Tabriz Dr, Billings MT 59105 | 96 | Democrat |
| Menahan, William T. (Red) | 1304 W Fifth, Anaconda MT 59711 | 67 | Democrat |
| Mercer, John A. | PO Box 450, Polson MT 59860 | 50 | Republican |
| Mills, Norm | 1908 9th St W, Billings MT 59104 | 90 | Republican |
| Molnar, Brad | Box 524, Laurel MT 59044 | 85 | Republican |
| Nelson, Linda J. | HC 51, Box 30, Medicine Lake MT 59247 | 19 | Democrat |
| Nelson, Thomas E. | 1116 Moon Valley Rd, Billings MT 59105 | 95 | Republican |
| Orr, Scott J. | PO Box 1318, Libby MT 59923-1318 | 2 | Republican |
| Pavlovich, Robert J. (Bob) | 1375 Harrison Ave, Butte MT 59701 | 70 | Democrat |
| Peck, Ray | 729 Fourth Ave, Havre MT 59501 | 15 | Democrat |
| Peterson, Mary Lou | 234 Glen Lake Dr, Eureka MT 59917 | 1 | Republican |
| Quilici, Joe | 3040 Kossuth, Butte MT 59701 | 71 | Democrat |
| Raney, Bob | 212 S Sixth St, Livingston MT 59047 | 82 | Democrat |
| Ream, Robert R. (Bob) | 5950 Wildcat Rd, Missoula MT 59802 | 54 | Democrat |
| Rehbein, Jr., William | PO Box 156, Lambert MT 59243 | 21 | Republican |
| Rice, Jim | 1525 Williamsburg Rd, Helena MT 59601 | 43 | Republican |
| Rice, Sheila | 1501 4th Ave N, Great Falls MT 59401 | 36 | Democrat |
| Rose, John (Sam) | Box 604, Choteau MT 59422 | 11 | Republican |
| Russell, Angela | PO Box 333, Lodge Grass MT 59050 | 99 | Democrat |
| Ryan, William M. (Bill) | 8 18th Ave S, Great Falls MT 59405 | 38 | Democrat |
| Sayles, Tim | 4528 N Ave West, Missoula MT 59801 | 61 | Republican |
| Schwinden, Dore | Box 6060, Wolf Point MT 59201 | 20 | Democrat |
| Schye, Ted | N Star Route, Glasgow MT 59230 | 18 | Democrat |
| [2]Shea, Debbie | 100 Moon Ln | 72 | Democrat |
| Simon, Bruce T. | 217 Clark Ave, Billings MT 59101 | 91 | Republican |
| Simpkins, Richard D. | 1221 Park Garden Rd, Great Falls MT 59404 | 39 | Republican |
| Smith, Liz | 311 Freezeout Ln, Deer Lodge MT 59722 | 48 | Republican |
| Spring, Wilbur | 2383 Penwell Bridge Rd, Belgrade MT 59714 | 77 | Republican |
| Squires, Carolyn M. | 2111 S Tenth St W, Missoula MT 59801 | 58 | Democrat |
| Stanford, Wayne | 420 Dry Gulch Rd, Stevensville MT 59870 | 62 | Democrat |
| Stovall, Jay | 8325 Pryor Rd, Billings MT 59101 | 98 | Republican |
| Strizich, William S. (Bill) | 736 27th Ave NE, Great Falls MT 59404 | 41 | Democrat |
| Swanson, Emily | 1716 S Willson, Bozeman MT 59715 | 79 | Democrat |
| Tash, Bill | 45 Vista Dr, Dillon MT 59725 | 73 | Republican |
| Toole, Howard | 1625 McDonald, Missoula MT 59801 | 60 | Democrat |
| Tunby, Rolph | PO Box 56, Plevna MT 59344 | 24 | Republican |
| Tuss, Carley | 1910 Colorado Ave, Black Eagle MT 59414 | 35 | Democrat |
| Vogel, Randy | 5953 Lazy Ln, Billings MT 59106 | 86 | Republican |
| Wagner, Douglas T. | PO Box 21, Hungry Horse MT 59919 | 8 | Republican |
| Wallin, Norm | 2422 Springcreek Dr, Bozeman MT 59715 | 78 | Republican |
| Wanzenried, David E. | 307 1st Ave E #12, Kalispell MT 59901 | 7 | Democrat |
| Whalen, Timothy J. | 101 Avenue C, Billings MT 59101 | 93 | Democrat |
| Winslow, Karyl | 4608 Box Canyon, Billings MT 59103 | 97 | Republican |
| Wiseman, William R. | 3310 Centennial Ct, Great Falls MT 59404 | 33 | Republican |
| Wyatt, Diana E. | 300 31st St S, Great Falls MT 59405 | 37 | Democrat |
| Zook, Tom | c/o Broadus Stage, Miles City MT 59301 | 25 | Republican |

[1] Resigned October 20, 1993.
[2] Assumed Representative Brown's position.

# MCA SECTIONS

# AFFECTED BY

# NOVEMBER 1993 SPECIAL SESSION

| | | | |
|---|---|---|---|
| Hansen, Stella Jean | 841 Woodford St, Missoula MT 59801 | 57 | Democrat |
| Hanson, H.S. (Sonny) | 2237 Green Terrace Dr, Billings MT 59102 | 87 | Republican |
| Hanson, Marian W. | PO Box 237, Ashland MT 59003 | 100 | Republican |
| Harper, Hal | 9 Comstock Rd, Helena MT 59601 | 44 | Democrat |
| Harrington, Dan W. | 1201 N Excelsior, Butte MT 59701 | 68 | Democrat |
| Hayne, Harriet | PO Box 285, Dupuyer MT 59432 | 10 | Republican |
| Herron, Jack R. | 360 5th Ave E N, Kalispell MT 59901 | 6 | Republican |
| Hibbard, Chase | 725 Madison, Helena MT 59601 | 46 | Republican |
| Johnson, John | 124 Gresham, Glendive MT 59330 | 23 | Democrat |
| Johnson, Royal C. | 2915 Illinois, Billings MT 59102 | 88 | Republican |
| Kadas, Mike | 922 Taylor, Missoula MT 59802 | 55 | Democrat |
| Kasten, Betty Lou | HC 77, Box A-14, Brockway MT 59214 | 28 | Republican |
| Keller, Vernon V. | HC 55, Box 355, Fishtail MT 59028 | 83 | Republican |
| Knox, Dick | HCR Box 14, Winifred MT 59489 | 29 | Republican |
| Larson, Don | PO Box 285, Seeley Lake MT 59868 | 65 | Democrat |
| Mason, Gary D. | 1368 Auction Way, Corvallis MT 59828 | 63 | Republican |
| McCaffree, Ed | PO Box 1354, Forsyth MT 59327 | 27 | Democrat |
| McCarthy, Bea | 1906 Ogden, Anaconda MT 59711 | 66 | Democrat |
| McCulloch, Scott T. | 611 Tabriz Dr, Billings MT 59105 | 96 | Democrat |
| Menahan, William T. (Red) | 1304 W Fifth, Anaconda MT 59711 | 67 | Democrat |
| Mercer, John A. | PO Box 450, Polson MT 59860 | 50 | Republican |
| Mills, Norm | 1908 9th St W, Billings MT 59104 | 90 | Republican |
| Molnar, Brad | Box 524, Laurel MT 59044 | 85 | Republican |
| Nelson, Linda J. | HC 51, Box 30, Medicine Lake MT 59247 | 19 | Democrat |
| Nelson, Thomas E. | 1116 Moon Valley Rd, Billings MT 59105 | 95 | Republican |
| Orr, Scott J. | PO Box 1318, Libby MT 59923-1318 | 2 | Republican |
| Pavlovich, Robert J. (Bob) | 1375 Harrison Ave, Butte MT 59701 | 70 | Democrat |
| Peck, Ray | 729 Fourth Ave, Havre MT 59501 | 15 | Democrat |
| Peterson, Mary Lou | 234 Glen Lake Dr, Eureka MT 59917 | 1 | Republican |
| Quilici, Joe | 3040 Kossuth, Butte MT 59701 | 71 | Democrat |
| Raney, Bob | 212 S Sixth St, Livingston MT 59047 | 82 | Democrat |
| Ream, Robert R. (Bob) | 5950 Wildcat Rd, Missoula MT 59802 | 54 | Democrat |
| Rehbein, Jr., William | PO Box 156, Lambert MT 59243 | 21 | Republican |
| Rice, Jim | 1525 Williamsburg Rd, Helena MT 59601 | 43 | Republican |
| Rice, Sheila | 1501 4th Ave N, Great Falls MT 59401 | 36 | Democrat |
| Rose, John (Sam) | Box 604, Choteau MT 59422 | 11 | Republican |
| Russell, Angela | PO Box 333, Lodge Grass MT 59050 | 99 | Democrat |
| Ryan, William M. (Bill) | 8 18th Ave S, Great Falls MT 59405 | 38 | Democrat |
| Sayles, Tim | 4528 N Ave West, Missoula MT 59801 | 61 | Republican |
| Schwinden, Dore | Box 6060, Wolf Point MT 59201 | 20 | Democrat |
| Schye, Ted | N Star Route, Glasgow MT 59230 | 18 | Democrat |
| [2]Shea, Debbie | 100 Moon Ln | 72 | Democrat |
| Simon, Bruce T. | 217 Clark Ave, Billings MT 59101 | 91 | Republican |
| Simpkins, Richard D. | 1221 Park Garden Rd, Great Falls MT 59404 | 39 | Republican |
| Smith, Liz | 311 Freezeout Ln, Deer Lodge MT 59722 | 48 | Republican |
| Spring, Wilbur | 2383 Penwell Bridge Rd, Belgrade MT 59714 | 77 | Republican |
| Squires, Carolyn M. | 2111 S Tenth St W, Missoula MT 59801 | 58 | Democrat |
| Stanford, Wayne | 420 Dry Gulch Rd, Stevensville MT 59870 | 62 | Democrat |
| Stovall, Jay | 8325 Pryor Rd, Billings MT 59101 | 98 | Republican |
| Strizich, William S. (Bill) | 736 27th Ave NE, Great Falls MT 59404 | 41 | Democrat |
| Swanson, Emily | 1716 S Willson, Bozeman MT 59715 | 79 | Democrat |
| Tash, Bill | 45 Vista Dr, Dillon MT 59725 | 73 | Republican |
| Toole, Howard | 1625 McDonald, Missoula MT 59801 | 60 | Democrat |
| Tunby, Rolph | PO Box 56, Plevna MT 59344 | 24 | Republican |
| Tuss, Carley | 1910 Colorado Ave, Black Eagle MT 59414 | 35 | Democrat |
| Vogel, Randy | 5953 Lazy Ln, Billings MT 59106 | 86 | Republican |
| Wagner, Douglas T. | PO Box 21, Hungry Horse MT 59919 | 8 | Republican |
| Wallin, Norm | 2422 Springcreek Dr, Bozeman MT 59715 | 78 | Republican |
| Wanzenried, David E. | 307 1st Ave E #12, Kalispell MT 59901 | 7 | Democrat |
| Whalen, Timothy J. | 101 Avenue C, Billings MT 59101 | 93 | Democrat |
| Winslow, Karyl | 4608 Box Canyon, Billings MT 59103 | 97 | Republican |
| Wiseman, William R. | 3310 Centennial Ct, Great Falls MT 59404 | 33 | Republican |
| Wyatt, Diana E. | 300 31st St S, Great Falls MT 59405 | 37 | Democrat |
| Zook, Tom | c/o Broadus Stage, Miles City MT 59301 | 25 | Republican |

[1] Resigned October 20, 1993.
[2] Assumed Representative Brown's position.

# MCA SECTIONS

# AFFECTED BY

# NOVEMBER 1993 SPECIAL SESSION

# CODE SECTIONS AFFECTED

## The following list shows all sections affected by legislation passed by the 53rd Legislature in the November 1993 Special Session:

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 1-11-303 | amended | Ch. 22 | SB 31 |
| 2-6-110 | amended | Ch. 27 | HB 50 |
| 2-15-112 | amended | Ch. 23 | SB 32 |
| 2-15-2103 | repealed | Ch. 16 | HB 40 |
| 2-15-2105 | amended | Ch. 16 | HB 40 |
| 2-18-1101 | amended | Ch. 23 | SB 32 |
| 2-18-1102 | amended | Ch. 23 | SB 32 |
| 2-18-1103 | amended | Ch. 23 | SB 32 |
| 2-18-1104 | repealed | Ch. 23 | SB 32 |
| 2-18-1105 | amended | Ch. 23 | SB 32 |
| 2-18-1106 | amended | Ch. 23 | SB 32 |
| 2-18-1107 | enacted | Ch. 23 | SB 32 |
| 2-18-1203 | amended | Ch. 24 | SB 51 |
| 3-10-601 | amended | Ch. 39 | HB 89 |
| 5-7-103 | amended | Ch. 18 | SB 5 |
| 5-11-201 | amended | Ch. 22 | SB 31 |
| 5-11-202 | amended | Ch. 22 | SB 31 |
| 5-11-203 | amended | Ch. 22 | SB 31 |
| 5-12-303 | amended | Ch. 12 | HB 7 |
| 5-13-311 | enacted | Ch. 20 | SB 28 |
| 5-13-312 | enacted | Ch. 20 | SB 28 |
| 5-18-115 | amended | Ch. 27 | HB 50 |
| 7-1-2111 | amended | Ch. 9 | SB 18 |
| 7-2-2753 | repealed | Ch. 27 | HB 50 |
| 7-3-1301 | amended | Ch. 27 | HB 50 |
| 7-3-1309 | amended | Ch. 27 | HB 50 |
| 7-3-4252 | amended | Ch. 27 | HB 50 |
| 7-4-2401 | amended | Ch. 27 | HB 50 |
| 7-4-2505 | amended | Ch. 27 | HB 50 |
| 7-4-3007 | amended | Ch. 27 | HB 50 |
| 7-6-2540 | repealed | Ch. 27 | HB 50 |
| 7-6-4409 | amended | Ch. 27 | HB 50 |
| 7-6-4410 | amended | Ch. 27 | HB 50 |
| 7-6-4412 | amended | Ch. 27 | HB 50 |
| 7-6-4413 | amended | Ch. 27 | HB 50 |
| 7-7-2101 | amended | Ch. 9 | SB 18 |
| 7-7-2203 | amended | Ch. 9 | SB 18 |
| 7-8-2513 | amended | Ch. 27 | HB 50 |
| 7-12-4181 | amended | Ch. 27 | HB 50 |
| 7-12-4184 | amended | Ch. 27 | HB 50 |
| 7-13-233 | amended | Ch. 27 | HB 50 |
| 7-13-2304 | amended | Ch. 27 | HB 50 |
| 7-13-2306 | amended | Ch. 27 | HB 50 |
| 7-13-2527 | amended | Ch. 27 | HB 50 |
| 7-13-2528 | amended | Ch. 27 | HB 50 |
| 7-13-4309 | amended | Ch. 27 | HB 50 |
| 7-13-4507 | amended | Ch. 27 | HB 50 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 7-14-2524 | amended | Ch. 9 | SB 18 |
| 7-14-2525 | amended | Ch. 9 | SB 18 |
| 7-14-2735 | amended | Ch. 27 | HB 50 |
| 7-14-2738 | amended | Ch. 27 | HB 50 |
| 7-14-2739 | amended | Ch. 27 | HB 50 |
| 7-14-2740 | amended | Ch. 27 | HB 50 |
| 7-14-2742 | amended | Ch. 27 | HB 50 |
| 7-14-2743 | amended | Ch. 27 | HB 50 |
| 7-14-2744 | amended | Ch. 27 | HB 50 |
| 7-14-2745 | amended | Ch. 27 | HB 50 |
| 7-14-2755 | amended | Ch. 27 | HB 50 |
| 7-16-2327 | amended | Ch. 9 | SB 18 |
| 13-1-203 | amended | Ch. 4 | SB 7 |
| 15-1-101 | amended | Ch. 27 | HB 50 |
| 15-1-111 | amended | Ch. 27 | HB 50 |
| 15-1-201 | amended | Ch. 27 | HB 50 |
| 15-1-202 | amended | Ch. 27 | HB 50 |
| 15-1-205 | amended | Ch. 27 | HB 50 |
| 15-1-303 | amended | Ch. 27 | HB 50 |
| 15-1-403 | repealed | Ch. 27 | HB 50 |
| 15-1-506 | repealed | Ch. 27 | HB 50 |
| 15-1-521 | enacted | Ch. 27 | HB 50 |
| 15-2-301 | amended | Ch. 15 | HB 36 |
| 15-6-207 | amended | Ch. 27 | HB 50 |
| 15-6-208 | amended | Ch. 9 | SB 18 |
| 15-7-102 | amended | Ch. 27 | HB 50 |
| 15-7-106 | amended | Ch. 27 | HB 50 |
| 15-7-107 | amended | Ch. 27 | HB 50 |
| 15-7-208 | amended | Ch. 27 | HB 50 |
| 15-7-209 | amended | Ch. 27 | HB 50 |
| 15-7-213 | repealed | Ch. 27 | HB 50 |
| 15-7-304 | amended | Ch. 27 | HB 50 |
| 15-7-308 | amended | Ch. 27 | HB 50 |
| 15-7-402 | amended | Ch. 27 | HB 50 |
| 15-7-403 | amended | Ch. 27 | HB 50 |
| 15-8-102 | amended | Ch. 27 | HB 50 |
| 15-8-103 | repealed | Ch. 27 | HB 50 |
| 15-8-104 | amended | Ch. 27 | HB 50 |
| 15-8-105 | repealed | Ch. 27 | HB 50 |
| 15-8-106 | repealed | Ch. 27 | HB 50 |
| 15-8-111 | amended | Ch. 27 | HB 50 |
| 15-8-112 | amended | Ch. 27 | HB 50 |
| 15-8-113 | amended | Ch. 27 | HB 50 |
| 15-8-114 | repealed | Ch. 27 | HB 50 |
| 15-8-115 | amended | Ch. 27 | HB 50 |
| 15-8-201 | amended | Ch. 27 | HB 50 |
| 15-8-202 | amended | Ch. 27 | HB 50 |
| 15-8-205 | amended | Ch. 27 | HB 50 |
| 15-8-301 | amended | Ch. 27 | HB 50 |
| 15-8-302 | repealed | Ch. 27 | HB 50 |
| 15-8-303 | amended | Ch. 27 | HB 50 |
| 15-8-304 | amended | Ch. 27 | HB 50 |
| 15-8-307 | amended | Ch. 27 | HB 50 |
| 15-8-402 | amended | Ch. 27 | HB 50 |
| 15-8-601 | amended | Ch. 27 | HB 50 |
| 15-8-701 | amended | Ch. 27 | HB 50 |
| 15-8-702 | amended | Ch. 27 | HB 50 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 15-8-704 | amended | Ch. 27 | HB 50 |
| 15-8-705 | repealed | Ch. 27 | HB 50 |
| 15-8-706 | repealed | Ch. 27 | HB 50 |
| 15-8-707 | amended | Ch. 27 | HB 50 |
| 15-8-709 | amended | Ch. 27 | HB 50 |
| 15-8-710 | amended | Ch. 27 | HB 50 |
| 15-9-101 | amended | Ch. 27 | HB 50 |
| 15-9-102 | repealed | Ch. 27 | HB 50 |
| 15-9-103 | amended | Ch. 27 | HB 50 |
| 15-10-202 | amended | Ch. 27 | HB 50 |
| 15-10-203 | amended | Ch. 27 | HB 50 |
| 15-10-205 | amended | Ch. 27 | HB 50 |
| 15-10-206 | amended | Ch. 27 | HB 50 |
| 15-10-301 | repealed | Ch. 27 | HB 50 |
| 15-10-302 | repealed | Ch. 27 | HB 50 |
| 15-10-303 | repealed | Ch. 27 | HB 50 |
| 15-10-304 | repealed | Ch. 27 | HB 50 |
| 15-10-305 | amended | Ch. 27 | HB 50 |
| 15-10-306 | repealed | Ch. 27 | HB 50 |
| 15-10-307 | repealed | Ch. 27 | HB 50 |
| 15-10-308 | repealed | Ch. 27 | HB 50 |
| 15-15-101 | amended | Ch. 27 | HB 50 |
| 15-15-102 | amended | Ch. 27 | HB 50 |
| 15-15-103 | amended | Ch. 15 | HB 36 |
| | amended | Ch. 27 | HB 50 |
| 15-15-104 | amended | Ch. 15 | HB 36 |
| 15-16-101 | amended | Ch. 27 | HB 50 |
| 15-16-104 | amended | Ch. 27 | HB 50 |
| 15-16-105 | amended | Ch. 27 | HB 50 |
| 15-16-111 | repealed | Ch. 27 | HB 50 |
| 15-16-112 | repealed | Ch. 27 | HB 50 |
| 15-16-113 | repealed | Ch. 27 | HB 50 |
| 15-16-114 | repealed | Ch. 27 | HB 50 |
| 15-16-115 | amended | Ch. 27 | HB 50 |
| 15-16-117 | amended | Ch. 27 | HB 50 |
| 15-16-119 | enacted | Ch. 27 | HB 50 |
| 15-16-203 | amended | Ch. 27 | HB 50 |
| 15-16-302 | amended | Ch. 27 | HB 50 |
| 15-16-305 | amended | Ch. 27 | HB 50 |
| 15-16-402 | amended | Ch. 27 | HB 50 |
| 15-16-504 | amended | Ch. 27 | HB 50 |
| 15-16-611 | amended | Ch. 27 | HB 50 |
| 15-17-124 | amended | Ch. 27 | HB 50 |
| 15-17-317 | amended | Ch. 27 | HB 50 |
| 15-17-911 | amended | Ch. 27 | HB 50 |
| 15-18-412 | amended | Ch. 27 | HB 50 |
| 15-23-104 | amended | Ch. 27 | HB 50 |
| 15-23-106 | amended | Ch. 27 | HB 50 |
| 15-23-107 | amended | Ch. 27 | HB 50 |
| 15-23-115 | amended | Ch. 27 | HB 50 |
| 15-23-507 | amended | Ch. 27 | HB 50 |
| 15-23-601 | amended | Ch. 9 | SB 18 |
| 15-23-602 | amended | Ch. 9 | SB 18 |
| 15-23-603 | amended | Ch. 9 | SB 18 |
| 15-23-607 | amended | Ch. 9 | SB 18 |
| | amended | Ch. 27 | HB 50 |
| 15-23-612 | amended | Ch. 9 | SB 18 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 15-23-613 | amended | Ch. 9 | SB 18 |
| 15-23-614 | enacted | Ch. 9 | SB 18 |
| 15-23-702 | amended | Ch. 27 | HB 50 |
| 15-23-703 | amended | Ch. 27 | HB 50 |
| 15-23-704 | amended | Ch. 27 | HB 50 |
| 15-23-803 | amended | Ch. 27 | HB 50 |
| 15-23-804 | amended | Ch. 27 | HB 50 |
| 15-24-104 | amended | Ch. 27 | HB 50 |
| 15-24-302 | amended | Ch. 27 | HB 50 |
| 15-24-801 | amended | Ch. 27 | HB 50 |
| 15-24-901 | amended | Ch. 27 | HB 50 |
| 15-24-902 | amended | Ch. 27 | HB 50 |
| 15-24-903 | amended | Ch. 27 | HB 50 |
| 15-24-904 | amended | Ch. 27 | HB 50 |
| 15-24-905 | amended | Ch. 27 | HB 50 |
| 15-24-906 | amended | Ch. 27 | HB 50 |
| 15-24-920 | amended | Ch. 27 | HB 50 |
| 15-24-921 | amended | Ch. 27 | HB 50 |
| 15-24-1402 | amended | Ch. 27 | HB 50 |
| 15-24-1501 | amended | Ch. 27 | HB 50 |
| 15-24-1802 | amended | Ch. 27 | HB 50 |
| 15-24-1902 | amended | Ch. 27 | HB 50 |
| 15-24-2002 | amended | Ch. 27 | HB 50 |
| 15-24-2301 | repealed | Ch. 33 | HB 60 |
| 15-24-2302 | amended | Ch. 27 | HB 50 |
|  | repealed | Ch. 33 | HB 60 |
| 15-30-228 | repealed | Ch. 27 | HB 50 |
| 15-36-101 | amended | Ch. 9 | SB 18 |
| 15-36-104 | amended | Ch. 27 | HB 50 |
| 15-37-203 | amended | Ch. 27 | HB 50 |
| 15-51-104 | amended | Ch. 27 | HB 50 |
| 15-59-104 | amended | Ch. 27 | HB 50 |
| 15-59-203 | amended | Ch. 27 | HB 50 |
| 15-70-101 | amended | Ch. 10 | HB 15 |
| 15-70-301 | amended | Ch. 10 | HB 15 |
| 15-70-302 | amended | Ch. 10 | HB 15 |
| 15-70-303 | amended | Ch. 10 | HB 15 |
| 15-70-304 | amended | Ch. 10 | HB 15 |
| 15-70-305 | amended | Ch. 10 | HB 15 |
| 15-70-306 | amended | Ch. 10 | HB 15 |
| 15-70-309 | repealed | Ch. 10 | HB 15 |
| 15-70-311 | amended | Ch. 10 | HB 15 |
| 15-70-315 | repealed | Ch. 10 | HB 15 |
| 15-70-321 | amended | Ch. 10 | HB 15 |
| 15-70-324 | amended | Ch. 10 | HB 15 |
| 15-70-330 | amended | Ch. 10 | HB 15 |
| 15-70-341 | amended | Ch. 10 | HB 15 |
| 15-70-343 | amended | Ch. 10 | HB 15 |
| 15-70-349 | amended | Ch. 10 | HB 15 |
| 15-70-356 | amended | Ch. 10 | HB 15 |
| 15-70-361 | amended | Ch. 10 | HB 15 |
| 15-70-364 | amended | Ch. 10 | HB 15 |
| 17-1-510 | enacted | Ch. 37 | HB 21 |
| 17-3-111 | amended | Ch. 37 | HB 21 |
| 17-5-703 | amended | Ch. 8 | SB 4 |
|  | amended | Ch. 33 | HB 60 |
| 17-6-201 | amended | Ch. 37 | HB 21 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 17-7-102 | amended | Ch. 12 | HB 7 |
| 17-7-111 | amended | Ch. 12 | HB 7 |
| | amended | Ch. 13 | HB 30 |
| 17-7-122 | amended | Ch. 12 | HB 7 |
| 17-7-123 | amended | Ch. 12 | HB 7 |
| | amended | Ch. 13 | HB 30 |
| 17-7-304 | amended | Ch. 23 | SB 32 |
| 17-7-502 | amended | Ch. 10 | HB 15 |
| | amended | Ch. 36 | SB 46 |
| 17-8-306 | amended | Ch. 5 | SB 13 |
| 18-4-302 | amended | Ch. 11 | HB 43 |
| 19-3-908 | amended | Ch. 27 | HB 50 |
| 20-5-321 | amended | Ch. 32 | HB 56 |
| 20-6-401 | repealed | Ch. 36 | SB 46 |
| 20-6-402 | repealed | Ch. 36 | SB 46 |
| 20-6-403 | repealed | Ch. 36 | SB 46 |
| 20-6-404 | repealed | Ch. 36 | SB 46 |
| 20-6-405 | repealed | Ch. 36 | SB 46 |
| 20-6-406 | repealed | Ch. 36 | SB 46 |
| 20-6-407 | repealed | Ch. 36 | SB 46 |
| 20-6-408 | repealed | Ch. 36 | SB 46 |
| 20-6-703 | amended | Ch. 36 | SB 46 |
| 20-7-504 | amended | Ch. 39 | HB 89 |
| 20-7-506 | amended | Ch. 39 | HB 89 |
| 20-7-507 | amended | Ch. 39 | HB 89 |
| 20-7-705 | amended | Ch. 34 | HB 64 |
| 20-9-104 | amended | Ch. 35 | SB 1 |
| | amended | Ch. 36 | SB 46 |
| 20-9-122 | amended | Ch. 27 | HB 50 |
| 20-9-141 | amended | Ch. 9 | SB 18 |
| | amended | Ch. 35 | SB 1 |
| 20-9-306 | amended | Ch. 38 | HB 22 |
| 20-9-308 | amended | Ch. 38 | HB 22 |
| 20-9-331 | amended | Ch. 9 | SB 18 |
| 20-9-333 | amended | Ch. 9 | SB 18 |
| 20-10-144 | amended | Ch. 9 | SB 18 |
| 32-1-467 | amended | Ch. 17 | HB 68 |
| 33-2-708 | amended | Ch. 6 | SB 14 |
| 33-17-231 | amended | Ch. 6 | SB 14 |
| 33-17-236 | amended | Ch. 6 | SB 14 |
| 33-17-237 | amended | Ch. 6 | SB 14 |
| 41-3-1004 | amended | Ch. 21 | SB 29 |
| 41-3-1103 | amended | Ch. 19 | SB 23 |
| 50-61-112 | amended | Ch. 27 | HB 50 |
| 53-6-101 | amended | Ch. 14 | HB 34 |
| 53-6-103 | repealed | Ch. 31 | HB 33 |
| 53-6-104 | amended | Ch. 31 | HB 33 |
| 53-6-110 (5) | enacted | Ch. 14 | HB 34 |
| 53-6-116 | amended | Ch. 31 | HB 33 |
| 53-6-131 | amended | Ch. 14 | HB 34 |
| 53-9-109 | amended | Ch. 3 | HB 14 |
| 60-3-201 | amended | Ch. 40 | SB 43 |
| 61-2-107 | amended | Ch. 2 | HB 6 |
| 61-3-207 | amended | Ch. 27 | HB 50 |
| 61-3-303 | amended | Ch. 27 | HB 50 |
| 61-3-345 | amended | Ch. 27 | HB 50 |
| 61-3-503 | amended | Ch. 27 | HB 50 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 61-5-111 | amended | Ch. 26 | HB 66 |
| 61-5-121 | amended | Ch. 39 | HB 89 |
| 61-12-206 | amended | Ch. 10 | HB 15 |
| 61-12-402 | amended | Ch. 27 | HB 50 |
| 70-23-304 | amended | Ch. 27 | HB 50 |
| 70-23-305 | amended | Ch. 27 | HB 50 |
| 75-10-621 | amended | Ch. 16 | HB 40 |
| 76-2-102 | amended | Ch. 27 | HB 50 |
| 76-13-207 | amended | Ch. 27 | HB 50 |
| 76-15-518 | amended | Ch. 27 | HB 50 |
| 77-1-501 | amended | Ch. 27 | HB 50 |
| 77-1-503 | amended | Ch. 27 | HB 50 |
| 77-1-504 | amended | Ch. 27 | HB 50 |
| 77-2-313 | amended | Ch. 27 | HB 50 |
| 80-2-203 | amended | Ch. 27 | HB 50 |
| 80-2-204 | amended | Ch. 27 | HB 50 |
| 80-2-206 | amended | Ch. 27 | HB 50 |
| 80-2-207 | amended | Ch. 27 | HB 50 |
| 80-2-225 | amended | Ch. 27 | HB 50 |
| 81-2-302 | amended | Ch. 27 | HB 50 |
| 81-4-511 | amended | Ch. 27 | HB 50 |
| 81-4-513 | amended | Ch. 27 | HB 50 |
| 81-4-516 | amended | Ch. 27 | HB 50 |
| 81-7-303 | amended | Ch. 27 | HB 50 |
| 82-11-118 | enacted | Ch. 9 | SB 18 |
| 85-7-2136 | amended | Ch. 27 | HB 50 |
| 85-8-601 | amended | Ch. 27 | HB 50 |
| 85-9-603 | amended | Ch. 27 | HB 50 |
| 85-20-302 | enacted | Ch. 7 | HB 74 |
| 90-4-901 | repealed | Ch. 33 | HB 60 |
| 90-4-902 | repealed | Ch. 33 | HB 60 |
| 90-4-903 | repealed | Ch. 33 | HB 60 |
| 90-4-904 | repealed | Ch. 33 | HB 60 |
| 90-4-905 | repealed | Ch. 33 | HB 60 |
| 90-4-906 | repealed | Ch. 33 | HB 60 |

## The following MCA sections were affected by legislation passed by the 53rd Legislature in the November 1993 Special Session:

**1-11-303. Authority to issue ancillary publications.** The legislative council may issue supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements to the Montana Code Annotated. The legislative council shall publish a legislative review containing a summary of enactments of each session of the legislature. The legislative council shall publish a history and final status of all bills and resolutions of each session of the legislature that contains corrected voting records for bills and resolutions.

**History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(3); amd. Sec. 1, Ch. 22, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 22 inserted second and third sentences requiring the Legislative Council to publish a legislative review and a history and final status containing corrected voting records; and made minor changes in style. Amendment effective December 23, 1993.

**2-6-110. Electronic information — public access.** (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law and subject to subsection (4), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media; or

(b) expenses incurred by the agency as a result of mainframe processing charges or other out-of-pocket expenses directly associated with the request for information.

(3) An agency may also charge an hourly fee for each hour, or fraction of an hour, after one-half hour of copying service has been provided. The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312.

(4) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the computer-assisted mass appraisal system. The fee must be charged to persons requesting the data base or any part of the data base from the mass appraisal system. The department may not charge a fee for information provided from this data base to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property. All fees received by the department under this subsection must be deposited in a state special revenue fund as provided in 15-1-521.

(5) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(6) This section does not authorize the release of electronic security codes giving access to private information.

**History: En. Sec. 1, Ch. 254, L. 1991; amd. Sec. 10, Ch. 640, L. 1993; amd. Sec. 1, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) inserted reference to subsection (4); and inserted (4) concerning fee for developing and maintaining computer-assisted mass appraisal system. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 640 in (3) substituted "market salary" for "step 2". Amendment effective July 1, 1993.

**2-15-112.** *(Temporary)* **Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department must be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and maintain other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions; and

(e) eliminate positions within the department. If the salary for an eliminated position is not redistributed as provided for under 2-18-1107, the office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e). *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**2-15-112.** *(Effective July 1, 1997)* **Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department must be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and maintain other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions; and

(e) eliminate positions within the department. The office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e).

**History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973; amd. Sec. 26, Ch. 285, L. 1977; R.C.M. 1947, 82A-107; amd. Sec. 1, Ch. 239, L. 1989; amd. Sec. 1, Ch. 601, L. 1993; amd. Sec. 7, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 23 in (2)(e), at beginning of first full sentence, inserted "If the salary for an eliminated position is not redistributed as provided for under 2-18-1107"; and made minor changes in style. Amendment effective December 23, 1993, and terminates July 1, 1997.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

*1993 Amendment:* Chapter 601 inserted (2)(e) allowing a Department head to eliminate positions within the Department; and made minor changes in style. Amendment effective July 1, 1993.

**2-15-2103. Repealed.** Sec. 3, Ch. 16, Sp. L. November 1993.

**History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 97, Ch. 349, L. 1974; R.C.M. 1947, 82A-604.**

**2-15-2105. Water and wastewater operators' advisory council.** (1) There is a water and wastewater operators' advisory council.

(2) The council consists of seven members. Except as provided in subsection (2)(e), the members must be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality required to employ a certified operator and who holds a position of city manager, city engineer, director of public works, works manager, or an equivalent position;

(e) a qualified member of the staff of the department of health and environmental sciences, appointed by the department's director.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of 6 years.

**History: En. 82A-612 by Sec. 101, Ch. 349, L. 1974; R.C.M. 1947, 82A-612; amd. Sec. 3, Ch. 243, L. 1983; amd. Sec. 1, Ch. 16, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 16 in (2)(e) substituted language concerning a member of the staff of the Department of Health and Environmental Sciences appointed by the Director for language concerning the administrator of the Division of Environmental Sciences of the Department of Health and Environmental Sciences or a member of the staff appointed by the administrator; and made minor changes in style. Amendment effective December 23, 1993.

**2-18-1101.** *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person in charge of a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**2-18-1101.** *(Effective July 1, 1997)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

**History: En. Sec. 1, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 1, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 23 in definition of agency head inserted second sentence including president or other person in charge of a unit of the Montana University System; and inserted definition of group or team of employees. Amendment effective December 23, 1993, and terminates July 1, 1997.

*Applicability:* Section 11, Ch. 23, Sp. L. November 1993, provided that this section applies to achievements and outcomes occurring after December 23, 1993.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

**2-18-1102.** *(Temporary)* **Creation of program.** The department shall develop and administer a statewide employee incentive award program to appropriately recognize and monetarily reward individual state employees and groups or teams of employees for documented achievements and outcomes that contribute to the efficiency, economy, or other improvement of state government by reducing the costs or improving the effectiveness of governmental operations. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**2-18-1102.** *(Effective July 1, 1997)* **Creation of program.** The department shall develop and administer a statewide employee incentive award program to appropriately recognize and monetarily reward state employees in a timely manner for suggestions or inventions that contribute to the efficiency, economy, or other improvement of state government by reducing the costs of governmental operations.

**History: En. Sec. 2, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 2, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 23 near middle, after "monetarily reward", substituted "individual state employees and groups or teams of employees for documented achievements and outcomes" for "state employees in a timely manner for suggestions or inventions" and near end, after "costs", inserted "or improving the effectiveness". Amendment effective December 23, 1993, and terminates July 1, 1997.

*Applicability:* Section 11, Ch. 23, Sp. L. November 1993, provided that this section applies to achievements and outcomes occurring after December 23, 1993.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

**2-18-1103.** *(Temporary)* **Powers and duties of department.** The department shall:

(1) adopt rules to implement this part;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under this part; and

(4) prepare and submit, in the manner provided in 5-11-210, a list of incentive awards and the corresponding savings to the state and improvements in the effectiveness of state government and shall provide a general review of and recommendations for improving the operation of this part. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**2-18-1103.** *(Effective July 1, 1997)* **Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

(6) prepare and submit, as a part of the information required by 17-7-111, a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program; and

(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst.

**History: En. Sec. 3, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 1, Ch. 23, Sp. L. June 1986; amd. Sec. 12, Ch. 112, L. 1991; amd. Sec. 11, Ch. 349, L. 1993; amd. Sec. 3, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 23 in (1) substituted "implement this part" for "equitably administer the employee incentive award program"; at end of (3) substituted "this part" for "the program"; deleted former (4) and (5) that read: "(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first year monetary savings;

(5) hear appeals from employees on the operation of the program"; near beginning of (4), after "submit", substituted "in the manner provided in 5-11-210" for "as a part of the information required by 17-7-111", after "savings to the state" substituted "and improvements in the effectiveness of state government" for "resulting from each employee's suggestion or invention", and at end substituted "operation of this part" for "program"; deleted (7) that read: "send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst"; and made minor changes in style. Amendment effective December 23, 1993, and terminates July 1, 1997.

*Applicability:* Section 11, Ch. 23, Sp. L. November 1993, provided that this section applies to achievements and outcomes occurring after December 23, 1993.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

*1993 Amendment:* Chapter 349 near beginning of (6), after "submit", substituted "as a part of the information required by 17-7-111" for "as provided in 5-11-210, a biennial report to the legislature containing".

**2-18-1104. Repealed.** Sec. 9, Ch. 23, Sp. L. November 1993.

**History: En. Sec. 4, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985.**

**2-18-1105.** *(Temporary)* **Eligibility for award.** (1) Except as provided in subsection (2), an employee, a group or team of employees, or a nonemployee is eligible for an incentive award:

(a) for efforts that significantly contribute to documented achievements or outcomes eliminating or reducing an agency's expenditures; or

(b) for improving the effectiveness of state government or improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee or nonemployee is not eligible for an individual incentive award unless the employee's or nonemployee's documented achievement or outcome was accomplished without significant contributions from others.

(b) A director, as defined in 2-15-102, or a legislator is not eligible for the incentive award provided for under this part.

(3) Suggestions relating to an agency are eligible for an award from that agency's agency head even if the employee or group or team of employees, or

one or more members of the group or team, do not work for that agency. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**2-18-1105.** *(Effective July 1, 1997)* **Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if his suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

**History: En. Sec. 5, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 4, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 23 in (1), after "employee", inserted "a group or team of employees, or a nonemployee" and after "award" deleted "if his suggestion or invention results in"; at beginning of (1)(a) inserted "for efforts that significantly contribute to documented achievements or outcomes"; at beginning of (1)(b) inserted "for improving the effectiveness of state government or"; substituted (2)(a) concerning ineligibility for an individual incentive award unless accomplished without significant contributions from others for former (2)(a) that read: "An employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department"; deleted former (2)(b) that read: "(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research"; inserted (2)(b) concerning ineligibility of a director or a legislator; and inserted (3) providing that suggestions relating to an agency are eligible for an award even if the employee or some members of a group of employees do not work for that agency. Amendment effective December 23, 1993, and terminates July 1, 1997.

*Applicability:* Section 11, Ch. 23, Sp. L. November 1993, provided that this section applies to achievements and outcomes occurring after December 23, 1993.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

**2-18-1106.** *(Temporary)* **Agency head to grant award — amount and source of award.** (1) An agency head may grant an incentive award to an employee, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes in the agency, as enumerated in 2-18-1105. An employee or a member of a group or team of employees need not be employed by the agency that benefits from the achievement or outcome and whose agency head grants the award in order to be granted an award.

(2) The incentive award for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings are actually incurred is the agency head's estimated dollar value of the achievement or outcome, up to a maximum of $500 per employee or nonemployee or, in the discretion of the agency head, not more than 40 hours of paid leave time for an employee. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The amount of an award for an achievement or outcome producing cost savings that can be measured after the savings are actually incurred must be determined by the agency head but may not exceed:

(a) 10% of the first $100,000 of cost savings actually incurred during the 12 months following implementation of the suggestion; plus

(b) 5% of the next $100,000 of cost savings actually incurred during that 12-month period; plus

(c) 2% of the next $100,000 of cost savings actually incurred during that 12-month period.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined. The agency head shall pay the award from the agency's budget. This award is in addition to the recipient's regular compensation or leave time.

(5) The number of awards granted by an agency in a state government fiscal year may not exceed the number equal to 20% of the average number of full-time equivalent employees in that agency during that fiscal year. The office of budget and program planning may grant an agency with less that 50 full-time equivalent employees an exemption from this limitation, but the exemption may not allow more awards than the number equal to 50% of the average number of full-time equivalent employees in the agency during the fiscal year.

(6) Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**2-18-1106.** *(Effective July 1, 1997)* **Agency head to grant award — amount and source of award.** (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award shall be 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of $3,000. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the agency's budget in a single, lump-sum award. This award is in addition to the recipient's regular compensation.

**History: En. Sec. 6, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Secs. 1, 2, Ch. 103, L. 1985; amd. Sec. 2, Ch. 23, Sp. L. June 1986; amd. Sec. 1, Ch. 201, L. 1987; amd. Sec. 5, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 23 substituted (1) concerning an incentive award to an employee, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes in the agency or employees who are not members of the agency that benefits from the achievement or outcome for former text that read: "After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105"; substituted first sentence of (2) concerning nondetermined incentive award as the agency head's estimated dollar value of the achievement or outcome, up to a maximum of $500 per employee or nonemployee or, in the discretion of the agency head, not more than 40 hours of paid leave time for an employee for "The incentive award shall be 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of $3,000"; inserted (3) establishing that the amount of an award to be determined by agency head not exceed 10% of first $100,000, 5% of second $100,000, and 2% of third $100,000 of actual savings incurred during first 12-month period of achievement or outcome; inserted (4)(a) requiring agency head to determine amount each person is to receive if award is divided; inserted first sentence of (4)(b) requiring a lump-sum payment of award no later than 90 days after end of 12-month period following implementation, inserted second sentence allowing agency head to pay award at any time savings can be determined, in third sentence, after "pay the" substituted "award" for "employee" and at end deleted "in a single, lump-sum award", and at end of fourth sentence inserted "or leave time"; inserted (5) limiting number of awards within an agency during state fiscal year to not more than 20% of the average number of full-time equivalent employees and allowing office of budget and program planning to grant agency with less than 50 full-time equivalent employees an exemption from the 20% limitation but not to exceed 50% of the average number of full-time equivalent employees in the agency during a fiscal year; inserted (6) concerning list of the number of incentive awards granted; and made minor changes in style. Amendment effective December 23, 1993, and terminates July 1, 1997.

*Applicability:* Section 11, Ch. 23, Sp. L. November 1993, provided that this section applies to achievements and outcomes occurring after December 23, 1993.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

**2-18-1107.** *(Temporary)* **Salary increase based on elimination of position.** An agency head, as defined in 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the agency within the last 30 days. However, an increased salary may not exceed the market salary for that position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this section, the agency may not be given an increased appropriation in regard to the eliminated position under 2-15-112(2)(e). An increase for an employee who is in a collective bargaining unit is a negotiable subject under 39-31-305. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**History: En. Sec. 6, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*Effective Date:* Section 12, Ch. 23, Sp. L. November 1993, provided that this section is effective December 23, 1993.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that this section terminates July 1, 1997.

**2-18-1203.** *(Temporary)* **General protection — job register — seniority preference.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, or closure of or a reduction in force at an agency is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.

(b) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(c) inclusion in a special job register from which all agencies, except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment.

(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.

(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy. *(Terminates July 1, 1995—sec. 11, Ch. 477, L. 1993.)*

**History: En. Sec. 3, Ch. 477, L. 1993; amd. Sec. 1, Ch. 24, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 24 near beginning of (1)(c), after "agencies", inserted "except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104". Amendment effective December 23, 1993.

**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer; and

(b) 50% to the county general fund.

(4) The state treasurer shall distribute money received under subsection (3) as follows:

(a) 44.81% to the state general fund;

(b) 9.09% to the fish and game account in the state special revenue fund;

(c) 11.76% to the state highway account in the state special revenue fund;

(d) 16.93% to the traffic education account in the state special revenue fund;

(e) 0.57% to the department of livestock account in the state special revenue fund;

(f) 15.9% to the crime victims compensation account in the state special revenue fund; and

(g) 0.94% to the department of family services special revenue account for the battered spouses and domestic violence grant program.

**History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R.C.M. 1921; re-en. Sec. 4930, R.C.M. 1935; amd. Sec. 9, Ch. 491, L. 1973; amd. Sec. 4, Ch. 420, L. 1975; amd. Sec. 15, Ch. 344, L. 1977; R.C.M. 1947, 25-307; amd. Sec. 1, Ch. 557, L. 1987; amd. Sec. 1, Ch. 296, L. 1991; amd. Sec. 3, Ch. 667, L. 1991; amd. Sec. 1, Ch. 39, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 39 in (4)(a) increased amount to general fund from 27.88% to 44.81%; in (4)(d) decreased amount to traffic education account from 33.86% to 16.93%; and made minor changes in style. Amendment effective July 1, 1994.

**5-7-103. Licenses — fees — eligibility — waiver.** (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is $50 for each lobbyist. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within 10 days of the date of the filing of the application.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines and license fees collected under this chapter must be deposited in the state treasury.

(4) The commissioner may adopt rules to implement the waiver provisions of subsection (1).

**History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(1); amd. Sec. 3, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 1, Ch. 91, L. 1991; amd. Sec. 3, Ch. 498, L. 1991; amd. Sec. 1, Ch. 18, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 18 in (1), in fourth sentence after "fee", deleted "of $10", inserted fifth sentence establishing $50 lobbyist license fee, and inserted last two sentences providing for license fee waiver; inserted (4) authorizing adoption of rules to implement fee waiver; and made minor changes in style. Subsections (1) through (3) effective January 1, 1994. Subsection (4) effective December 23, 1993.

**5-11-201. Journals — how authenticated — filing.** The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker. Each authenticated journal must be filed with the secretary of state. A copy of each authenticated journal must be filed with the legislative council.

**History: En. Sec. 203, Pol. C. 1895; re-en. Sec. 70, Rev. C. 1907; re-en. Sec. 68, R.C.M. 1921; Cal. Pol. C. Sec. 256; re-en. Sec. 68, R.C.M. 1935; R.C.M. 1947, 43-304; amd. Sec. 2, Ch. 22, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 22 inserted second and third sentences requiring filing of each authenticated journal with the Secretary of State and filing of a copy of each authenticated journal with the Legislative Council. Amendment effective December 23, 1993.

**5-11-202. Printing of session laws.** The legislative council shall deliver to the appropriate printer, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws and resolutions passed or adopted during the session. The session laws must be delivered to the appropriate printer in the form provided for in 5-11-205 and 5-11-206.

**History: En. 43-711.1 by Sec. 3, Ch. 96, L. 1973; R.C.M. 1947, 43-711.1; amd. Sec. 2, Ch. 138, L. 1979; amd. Sec. 3, Ch. 22, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 22 in first sentence, after "resolutions", deleted "and journals" and after "session" deleted "with proper indexes to the same" and inserted second sentence requiring delivery of session laws to the printer in proper form; and made minor changes in style. Amendment effective December 23, 1993.

**5-11-203. Distribution of session laws — inspection of journals.** (1) Immediately after the session laws are published, the legislative council shall distribute them.

(2) The council shall make the house and senate journals available for inspection or copying by the public as provided in Title 2, chapter 6, part 1. The council may publish the journals in an electronic format.

(3) The following entities may receive the number of copies of session laws listed at no cost:

(a) to the library of congress, eight copies;

(b) to the state library, two copies;

(c) to the state historical library, two copies;

(d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(e) to the library of each custodial institution, one copy;

(f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102(8), one copy;

(g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(j) to each county clerk, one copy for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy.

**History: En. Sec. 1, Ch. 86, L. 1907; re-en. Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1929; re-en. Sec. 135, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R.C.M. 1947; redes. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973; amd. Sec. 13, Ch. 309, L. 1977; R.C.M. 1947, 43-711.2; amd. Sec. 1, Ch. 65, L. 1979; amd. Sec. 3, Ch. 138, L. 1979; amd. Sec. 18, Ch. 575, L. 1981; amd. Sec. 2, Ch. 3, L. 1983; amd. Sec. 4, Ch. 22, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 22 near beginning of (1), before "the session laws", deleted "the senate and house journals"; substituted present (2) regarding availability of journals for copying and allowing publication in an electronic format for former (2)(a) through (2)(e) that required that journals be distributed "(a) to each county clerk, one copy of each for the use of the county;

(b) to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which two copies will be deposited with the state historical library for security purposes;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress and each public officer as defined in 2-2-102, two copies of each; and

(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the journals were adopted, one copy of each"; at beginning of (3) substituted "The following entities may receive the number of copies of session laws listed at no cost" for "The council shall distribute the session laws as follows"; deleted former (3)(a) that read: "(a) to each cabinet level department of the executive branch of the United States, one copy each; to any agency, commission, conference, or corporation established by the United States government or any other subdivision thereof upon request and approval by the legislative council, one copy"; in (3)(j) changed from three to one the number of copies allowed to each County Clerk; and made minor changes in style. Amendment effective December 23, 1993.

**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may investigate and examine the costs and revenues of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

(4) The budget director shall furnish the legislative fiscal analyst with copies of all budget requests, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, at the time of submission to the budget director as provided by law and, if requested, all underlying and supporting documentation. In preparing the executive budget for the next biennium for submission to the legislature, the budget director shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst, on a confidential basis and in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst:

(a) by October 10, a preliminary budget reflecting the base budget and, by November 1, a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium;

(b) by November 15, a preliminary budget that must meet the statutory requirements for submission of the budget to the legislature;

(c) by November 12, a paper copy and an electronic copy of the documents that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and

(d) by December 15, all amendments to the preliminary budget.

(6) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(7) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure.

**History: En. 43-1115 by Sec. 7, Ch. 448, L. 1975; R.C.M. 1947, 43-1115; amd. Sec. 1, Ch. 25, Sp. L. June 1986; amd. Sec. 1, Ch. 787, L. 1991; amd. Sec. 1, Ch. 20, L. 1993; amd. Sec. 1, Ch. 12, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 12 in (4), in first sentence, required the budget requests to be "in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst" and inserted last sentence requiring the budget director to use the base budget, present law base, and new proposals as defined in 17-7-102 in preparing the executive budget for the next biennium; in (5), at end of introductory paragraph, inserted "and in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst"; in (5)(a), at beginning, substituted "October 10, a preliminary budget reflecting the base budget and, by November 1, a present law base for each agency and" for "December 1" and near end substituted "base budget and present law base" for "budget"; in (5)(b) substituted "November 15" for "December 1"; in (5)(c) substituted "November 12" for "December 3"; in (6) inserted last sentence requiring the fiscal analyst to use the base budget, present law base, and new proposals as defined in 17-7-102 in preparing the budget analysis for the next biennium for submission to the Legislature; and made minor changes in style. Amendment effective December 23, 1993.

*1993 Amendment:* Chapter 20 in (3), at end of second sentence, substituted "removing names, addresses, occupations, social security numbers, and taxpayer identification numbers" for "a masking method that conceals the identity of the taxpayer" and substituted third and fourth sentences prohibiting altering data and restricting disclosure for former language that read: "The masking method may not destroy the statistical integrity of the individual income tax records. The masking method, including how data is masked, must be disclosed to the legislative fiscal analyst"; and made minor changes in style.

**5-13-311.** *(Temporary)* **Legislative auditor to establish and maintain toll-free number for reporting fraud, waste, and abuse — procedures.** (1) The legislative auditor shall establish and maintain a toll-free telephone number for use by Montana residents for the reporting of fraud, waste, and abuse in state government. The legislative auditor shall review all telephone calls received at the toll-free number and shall maintain a record of each call. The legislative auditor shall:

(a) analyze and verify the information received from each telephone call; or

(b) refer the information for appropriate action to the agency that is or appears to be the subject of the call.

(2) A state agency that receives information referred to it by the legislative auditor pursuant to this section shall take adequate and appropriate action to investigate and remedy any fraud, waste, or abuse discovered as a result of the referral. The agency shall report in writing to the legislative auditor concerning the results of its investigation and those measures taken to correct any fraud, waste, or abuse discovered as a result of the referral.

(3) Information received at the toll-free number is confidential until the time that the legislative auditor or other appropriate agency determines the validity of the information and takes corrective action. After the legislative auditor or other appropriate agency takes action to verify the fraud, waste, or abuse complained of and takes any corrective action, information concerning the subject of the complaint and the remedy, if any, is public information unless precluded by law.

(4) The legislative auditor shall, as directed by the legislative audit committee, periodically report to the committee on:

(a) the use of the toll-free number;

(b) the results of the reviews, verifications, and referrals; and

(c) any corrective actions taken by the appropriate agencies.

(5) Information received at the toll-free number concerning a governmental entity other than state government may be referred by the legislative auditor to an appropriate federal, state, or local government agency.

(6) If the legislative auditor determines that as a result of a review and verification or referral pursuant to this section, a waste of state resources has occurred, the legislative auditor shall report the matter in writing to the legislative fiscal analyst.

(7) The legislative auditor shall advertise the existence and purpose of the toll-free number in an appropriate manner. *(Terminates July 1, 1995—sec. 6, Ch. 20, Sp. L. November 1993.)*

**History: En. Sec. 1, Ch. 20, Sp. L. November 1993.**

**Compiler's Comments**

*Effective Date:* Section 5, Ch. 20, Sp. L. November 1993, provided: "[This act] is effective July 1, 1994."

*Termination:* Section 6, Ch. 20, Sp. L. November 1993, provided: "[This act] terminates July 1, 1995."

**5-13-312.** *(Temporary)* **Deposit of money recovered.** Unless otherwise provided by law, money recovered as a result of an action taken pursuant to 5-13-311 must be deposited in the state general fund. *(Terminates July 1, 1995—sec. 6, Ch. 20, Sp. L. November 1993.)*

**History: En. Sec. 2, Ch. 20, Sp. L. November 1993.**

**Compiler's Comments**

*Effective Date:* Section 5, Ch. 20, Sp. L. November 1993, provided: "[This act] is effective July 1, 1994."

*Termination:* Section 6, Ch. 20, Sp. L. November 1993, provided: "[This act] terminates July 1, 1995."

**5-18-115. Report to revenue oversight committee.** The department of revenue shall at the request of the revenue oversight committee report to the revenue oversight committee on the department's progress in completing the revaluation cycle.

**History: En. Sec. 4, Ch. 13, L. 1989; amd. Sec. 3, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted "at the request of the revenue oversight committee report to the revenue oversight committee on the department's progress" for "report to the revenue oversight committee at every revenue oversight committee meeting as to its progress". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to that percentage of the true and full valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the amount of taxes levied on new production, production from horizontally completed wells, and incremental production, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%;

(d) the amount of value represented by new production or production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%; and

(e) 6% of the taxable value of the county on January 1 of each tax year.

**History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R.C.M. 1921; re-en. Sec. 4741, R.C.M. 1935; R.C.M. 1947, 16-2419(part); amd. Sec. 38, Ch. 614, L. 1981; amd. Sec. 18, Ch. 695, L. 1985; amd. Sec. 1, Ch. 611, L. 1987; amd. Sec. 1, Ch. 655, L. 1987; amd. Sec. 1, Ch. 612, L. 1989; amd. Sec. 66, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 161, L. 1991; amd. Sec. 10, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 in (2)(c), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied" and near end inserted reference to subsection (2)(c); near beginning of (2)(d), after "new production", inserted "or production from horizontally completed wells"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**7-2-2753. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 19, Ch. 105, L. 1937; amd. Sec. 2, Ch. 388, L. 1975; R.C.M. 1947, 16-4019; amd. Sec. 16, Ch. 250, L. 1979.**

**7-3-1301. Department of finance.** (1) The director of finance has charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and money; the making of special assessments; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage, and distribution of supplies needed by the municipality; and other duties as the commission may by ordinance require.

(2) The director of finance has all powers and shall perform all duties imposed upon county clerk and recorders and auditors by general law.

(3) All of the provisions of the general laws of the state with respect to budgets for cities and counties apply to the municipality.

**History: En. Secs. 45, 54, Ch. 121, L. 1923; re-en. Secs. 5520.45, 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3445, 11-3454(part); amd. Sec. 4, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "special assessments", deleted "and the assessment of property for taxation"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-3-1309. Division of assessment.** (1) There may be in the department of finance a division of assessment, the head of which may be the assessor. The division of assessment has the powers of and shall perform the duties prescribed for county assessors by general law.

(2) The division of assessment is in charge of the preparation of all special assessments for public improvements, the giving of notice of the assessments to property owners and purchasers of property under contracts for deed, and the certification of all unpaid assessments to the director of finance.

**History: En. Secs. 52, 53, Ch. 121, L. 1923; re-en. Secs. 5520.52, 5520.53, R.C.M. 1935; R.C.M. 1947, 11-3452, 11-3453; amd. Sec. 3, Ch. 526, L. 1983; amd. Sec. 5, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence of (1), in two places, substituted "may" for "shall" and in second sentence, near beginning, substituted "division of assessment has the powers of and shall perform" for "assessor and his deputies shall have the powers, qualify in the manner, and perform" and near end, after "assessors", deleted "and deputy assessors"; in (2), near beginning, substituted "division of assessment is" for "assessor shall also be"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-3-4252. Powers of council.** The council has and shall exercise all executive, legislative, and judicial powers and duties possessed and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

**History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part); amd. Sec. 6, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "attorney" deleted "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-4-2401. Deputy officers.** (1) Each county and township officer, except a justice of the peace and the county assessor, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. All compensation or salary of any deputy or assistant must be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk and recorder.

**History: (1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2)En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935;**

**Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410; amd. Sec. 7, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "justice of the peace", inserted "and the county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-4-2505. Amount of compensation for deputies and assistants.** (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) county attorney;

(e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving. The salary of a deputy county attorney, including longevity payments provided in 7-4-2503(3)(d), may not exceed the salary of the county attorney under whom the deputy is serving.

(b) If a deputy or assistant is employed for a period of less than 1 year, the compensation of the deputy or assistant must be for the time employed, provided the rate of compensation may not be in excess of the rates provided by law for similar deputies and assistants.

**History: Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; Ap. p. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; R.C.M. 1947, 25-604(part), 84-402(part); amd. Sec. 1, Ch. 603, L. 1981; amd. Sec. 4, Ch. 719, L. 1985; amd. Sec. 8, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 deleted former (1)(d) that listed the assessor; deleted (2)(c) that provided for deputy assessors' salaries; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-4-3007. Qualifications for office of county assessor — forfeiture of office.** (1) In addition to the qualifications set forth in 7-4-2201, each assessor, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the assessor has satisfactorily completed the assessor certification training as provided in 15-7-106(4); or

(ii) the assessor intends to take the assessor certification training at the next offering.

(2) An assessor forfeits office for failure to take and satisfactorily complete the assessor certification training within 36 months after taking office by

election or appointment or for failure to satisfactorily complete continuing education when conducted by the department of revenue, unless the board of county commissioners finds that:

(a) the assessor is excused for reasons beyond the assessor's control, including illness, a death in the family, or other good cause; or

(b) there is no other qualified person available for appointment as assessor.

(3) Subsections (1)(b) and (2) do not apply to county officers who are county assessors because their county office has been consolidated with the office of county assessor and who are not contractually required to perform property assessment duties for the department.

**History: En. Sec. 1, Ch. 623, L. 1989; amd. Sec. 167, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1)(b)(i), at end, substituted "15-7-106(4)" for "15-8-106(2)"; in (2) substituted "continuing education when conducted by the department of revenue" for "annual continuing education as provided in 15-8-106"; inserted (3) concerning county officers who are assessors because of consolidation of offices; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-6-2540. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 11, Ch. 680, L. 1991.**

**7-6-4409. Determination of assessments.** (1) The assessment made by the department of revenue for state and county purposes is the basis of taxation for cities and towns for the property situated in the city or town.

(2) It is the duty of the department, in making the property tax record, to separately and distinctly designate the real and personal property situated in cities and towns within each county in the state.

**History: (1)En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R.C.M. 1921; re-en. Sec. 5205, R.C.M. 1935; amd. Sec. 92, Ch. 405, L. 1973; Sec. 84-4717, R.C.M. 1947; (2)En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R.C.M. 1921; re-en. Sec. 5206, R.C.M. 1935; amd. Sec. 93, Ch. 405, L. 1973; Sec. 84-4718, R.C.M. 1947; R.C.M. 1947, 84-4717, 84-4718; amd. Sec. 9, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "department of revenue", and in (2), after "department", deleted "or its agent"; in (2) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-6-4410. Property tax record to be furnished to certain municipalities.** On or before the second Monday in July of each year, the department of revenue shall furnish a certified copy of the property tax record to all cities of the third class and towns within each county that make written request for the record on or before the first Monday in April of each year. The property tax record must pertain to property within the limits of the requesting cities and towns.

**History: (1)En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R.C.M. 1921; re-en. Sec. 5207, R.C.M. 1935; amd. Sec. 94, Ch. 405, L. 1973; Sec. 84-4719, R.C.M. 1947; (2)En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R.C.M. 1921; re-en. Sec. 5208, R.C.M. 1935; amd. Sec. 95, Ch.**

**405, L. 1973; Sec. 84-4720, R.C.M. 1947; R.C.M. 1947, 84-4719, 84-4720; amd. Sec. 10, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, after "department", inserted "of revenue" and deleted "or its agent" and substituted "property tax record" for "assessment book"; deleted (2) that allowed the Department of Revenue to charge for copies of assessment books; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-6-4412. Preparation of municipal property tax record.** (1) The county clerk, on or before the first Monday in October in each year, shall provide a copy of the property tax record to each city in the county if the city treasurer is required by an ordinance of the city to collect its taxes. The record must be a copy of the corrected property tax record of the county, as far as it refers to city property.

(2) The copy must be in a form that itemizes the different funds so that the city treasurer may extend the funds and collect the taxes.

**History: (1)En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R.C.M. 1921; re-en. Sec. 5211, R.C.M. 1935; Sec. 84-4723, R.C.M. 1947; (2)En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R.C.M. 1921; re-en. Sec. 5212, R.C.M. 1935; Sec. 84-4724, R.C.M. 1947; (3)En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R.C.M. 1921; re-en. Sec. 5213, R.C.M. 1935; Sec. 84-4725, R.C.M. 1947; R.C.M. 1947, 84-4723, 84-4724, 84-4725; amd. Sec. 11, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in first sentence, substituted "shall provide a copy of the property tax record to" for "to make a duplicate of the corrected assessment book for" and at beginning of last sentence substituted "The record must be" for "Such book shall be styled "The Duplicate Assessment Book for the City of ...." and must contain" and near middle substituted "property tax record" for "assessment book"; in (2) substituted "The copy must be in a form that itemizes" for "Such duplicate must be made in a book furnished by the city clerk of each city in the county and ruled in columns specifying"; deleted (3) that read: "(3) The county clerk must deliver such duplicate assessment book to each city treasurer and take his receipt therefor, having attached thereto the affidavit similar to the one set out in 15-10-306"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-6-4413. Collection of taxes.** (1) Except in the case of cities of the first, second, and third classes that provide by ordinance for the city treasurer to collect the taxes from the corrected property tax record, the county treasurer of each county shall collect the tax levied by all cities and towns in the respective county.

(2) The county treasurer shall collect the city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

**History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 12, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amend-

ments to this section apply to tax years after December 31, 1993.

**7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.

**History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part); amd. Sec. 4, Ch. 134, L. 1981; amd. Sec. 45, Ch. 614, L. 1981; amd. Sec. 1, Ch. 584, L. 1985; amd. Sec. 6, Ch. 695, L. 1985; amd. Sec. 2, Ch. 655, L. 1987; amd. Sec. 67, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near middle of (1), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied", inserted reference to subsection (2)(c), and after "new production" inserted "and production from horizontally completed wells"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, when necessary to do so, plus the value of any other production occurring after December 31, 1988, multiplied by 60% for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings on the site and furnishing and equipping the buildings for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county.

**History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part); amd. Sec. 1, Ch. 332, L. 1979; amd. Sec. 1, Ch. 617, L. 1979; amd. Sec. 46, Ch. 614, L. 1981; amd. Sec. 6, Ch. 447, L. 1985; amd. Sec. 7, Ch. 695, L. 1985; amd. Sec. 3, Ch. 655, L. 1987; amd. Sec. 10, Ch. 213, L. 1989; amd. Sec. 68, Ch. 11, Sp. L. June 1989; amd. Sec. 12, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near middle of (1) and (2), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied", inserted reference to subsection (2)(c), and after "new production" inserted "and production from horizontally completed wells"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**7-8-2513. Appraisal of land required — exception.** (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause the lands to be appraised by a qualified, independent person, who may be but is not required to be an employee of the department of revenue, to determine the value of the lands for the purpose of the sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease is considered an initial lease if the renewal is for a term exceeding 5 years.

(3) The board of county commissioners may lease mineral interests in land, whether the interests are severed or not, without an appraisal as required by subsection (1).

**History: En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.2(part); amd. Sec. 1, Ch. 391, L. 1983; amd. Sec. 13, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near end, substituted "employee" for "agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-12-4181. Collection of district assessments by county clerk — certification.** (1) Except as provided in 7-12-4183, in each city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 immediately after the second Monday of August of each year, it is the duty of the city treasurer or town clerk to certify, at the same time that the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by 7-6-4407, to the department of revenue all special assessments and taxes levied and assessed in accordance with any of the provisions of part 42 and this part.

(2) The department of revenue shall enter the special assessments and taxes upon the property tax record for the county. The county treasurer shall collect all taxes and assessments in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected.

**History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1945; R.C.M. 1947, 11-2233; amd. Sec. 14, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near end, substituted "department of revenue" for "county assessor of the county in which such city or town is situated"; in (2) substituted "The department of revenue shall enter the special assessments and taxes upon the property tax record for the county" for "The county assessor shall thereupon enter same upon the assessment roll of the county"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-12-4184. Reinstatement of delinquent assessment.** (1) Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as provided in this part, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from the county treasurer's records and proceedings, and reinstated in the office of the city treasurer and on the property tax record upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to the payment, withdrawal, and reinstatement, filed with the county treasurer, is authority for the county treasurer to cancel and withdraw the delinquent special assessment or installment.

(3) The withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before a tax deed is executed.

**History: En. Subd. (e), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.4, R.C.M. 1935; R.C.M. 1947, 11-2237; amd. Sec. 11, Ch. 251, L. 1979; amd. Sec. 15, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near end, substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-13-233. Procedure to collect service charge.** (1) The service charge may be imposed for:

(a) any fiscal year for which the district establishes a budget or incurs costs related to planning or constructing a solid waste management facility; or

(b) services to begin within 12 months.

(2) The board shall certify to the county commissioners of the county served by the solid waste management district the service charge needed for the current fiscal year, the due but unpaid service charges, and a description of the property against which the service charges are to be levied.

(3) The department of revenue shall ensure that the amount of the service charge is placed on property tax notices and that the service charge is collected with property taxes.

(4) The board may establish a system for collecting service charges other than by tax notices to property owners issued by the department of revenue. The board may collect the service charge more often than property taxes are collected.

(5) If not paid, the service charge becomes delinquent and becomes a lien on the property, subject to the same penalties and the same rate of interest as property taxes.

**History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 12, Ch. 770, L. 1991; amd. Sec. 16, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3), after "department of revenue", deleted "or its agent". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-13-2304. Notice of intention to levy tax.** (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, the board shall give notice of its intention to levy and collect a tax sufficient for the payment of bond obligations and other expenses.

(2) The notice must be given:

(a) by posting in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice as provided in 7-1-2121; and

(c) by forwarding, by mail as provided in 7-1-2122 at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners and the purchasers under contracts for deed of taxable real property within the district as shown by the current property tax record maintained by the department of revenue for the county or counties the boundaries of which include taxable real property of the district.

**History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 6, Ch. 526, L. 1983; amd. Sec. 21, Ch. 349, L. 1985; amd. Sec. 17, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2)(c) substituted "property tax record maintained by the department of revenue for" for "assessment book on file in the office of the assessor of"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-13-2306. Contents of notice — hearing and protest.** The notice required by 7-13-2304 must state:

(1) the amount of money required;

(2) the method of assessment that the board or boards of county commissioners intend to employ;

(3) the boundaries or description of the lands to be assessed, which may be recited in full or may be given by reference to any instrument on file or of record in the office of the clerk and recorder or treasurer of the county or counties in which the district or part of the district is situated or with the department of revenue; and

(4) the time when and the place where the board or boards of county commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining to the tax.

**History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 18, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3), after "treasurer", deleted "or assessor" and at end inserted "or with the department of revenue"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-13-2527. List of property owners.** (1) A copy of the order creating the district must be delivered to the department of revenue.

(2) The department shall, on or before August 1 of each year, prepare and certify a list of all persons owning class four property within the district and deliver a copy of the list to the board of trustees of the district.

**History: En. Sec. 10, Ch. 198, L. 1961; R.C.M. 1947, 70-417; amd. Sec. 3, Ch. 13, L. 1979; amd. Sec. 5, Ch. 479, L. 1979; amd. Sec. 1, Ch. 72, L. 1989; amd. Sec. 1, Ch. 773, L. 1991; amd. Sec. 5, Ch. 267, L. 1993; amd. Sec. 19, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "department of revenue" for "county assessor of each county within the district"; and in (2), at beginning, substituted "department" for "assessor". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment.* Chapter 267 in (2), after "class four", deleted "or class eleven"; and made minor changes in style. Amendment effective April 2, 1993.

*Effective Date — Applicability:* Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

**7-13-2528. Financial administration of district.** (1) The board of trustees shall, from any list prepared by the department of revenue as required by 7-13-2527, remove the names of any persons who have claimed exemption under this part prior to September 1 and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, must be presented by September 1 to the board of county commissioners, who shall levy the tax requested by the trustees. The board shall levy the tax in accordance with the trustees' request. In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services. The tax must be certified to the county clerk and recorder, who shall notify the department of revenue for entry of the tax on the property tax record as against those persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer is the treasurer for the district and shall hold the taxes, as collected, in a separate fund to be disbursed upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of the funds by the county treasurer.

**History: (1), (2)En. Sec. 11, Ch. 198, L. 1961; amd. Sec. 1, Ch. 79, L. 1975; Sec. 70-418, R.C.M. 1947; (3)En. Sec. 12, Ch. 198, L. 1961; Sec. 70-419, R.C.M. 1947; R.C.M. 1947, 70-418, 70-419; amd. Sec. 4, Ch. 13, L. 1979; amd. Sec. 6, Ch. 479, L. 1979; amd. Sec. 2, Ch. 72, L. 1989; amd. Sec. 20, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "department of revenue" for "county assessor"; in (2), near end after "recorder", substituted "who shall notify the department of revenue for entry of the tax on the property tax record" for "and entered on the assessment books"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-13-4309. Procedure to collect sewer charges.** (1) The sewer charges must be collected by the treasurer.

(2) On or before July 15 of each year, notice must be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to July 1 by the city or town. The notice must specify the assessment owing and in arrears at the time of giving notice. The notice must be in writing and must state the amount of arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the amount is paid

by August 15, the amount will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent. The notice must also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court. The notice may be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(3) (a) Except as provided in subsection (3)(b), on September 1, the city treasurer or town clerk shall certify and file with the department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and which arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town.

**History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973; R.C.M. 1947, 84-4726.1(part); amd. Sec. 1, Ch. 114, L. 1987; amd. Sec. 3, Ch. 115, L. 1987; amd. Sec. 21, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at end, substituted "shown in property tax records maintained by the department of revenue" for "recorded in the office of the county assessor"; in (3)(a), in two places, substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-13-4507. Notice of resolutions of intention and concurrence.** (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

(a) describes the local water quality program that would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the property tax record maintained by the department of revenue, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

**History: En. Sec. 6, Ch. 357, L. 1991; amd. Sec. 22, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3) substituted "property tax record maintained by the department of revenue" for "county assessor's office". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%. The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds that, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60% when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, may not exceed 22.5% of the total of the taxable value of the property within the county, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last preceding general assessment.

**History: (1), (2)En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973; Sec. 32-3804, R.C.M. 1947; (3)En. Sec. 7-301, Ch. 197, L. 1965; Sec. 32-3801, R.C.M. 1947; R.C.M. 1947, 32-3801(2), 32-3804(part); amd. Sec. 2, Ch. 332, L. 1979; amd. Sec. 4, Ch. 617, L. 1979; amd. Sec. 51, Ch. 614, L. 1981; amd. Sec. 8, Ch. 695, L. 1985;**

**amd. Sec. 4, Ch. 655, L. 1987; amd. Sec. 69, Ch. 11, Sp. L. June 1989; amd. Sec. 16, Ch. 10, L. 1993; amd. Sec. 13, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near middle of (1), (2), and (3), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied", inserted reference to subsection (2)(c), and after "new production" inserted "and production from horizontally completed wells"; at end of (1), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*1993 Amendment:* Chapter 10 in (2) and (3), after "15-23-612", inserted "multiplied by 60%"; and made minor changes in style.

**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property therein, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds.

**History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973; R.C.M. 1947, 32-3802; amd. Sec. 5, Ch. 617, L. 1979; amd. Sec. 52, Ch. 614, L. 1981; amd. Sec. 9, Ch. 695, L. 1985; amd. Sec. 5, Ch. 655, L. 1987; amd. Sec. 70, Ch. 11, Sp. L. June 1989; amd. Sec. 14, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near middle of (1), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied", inserted reference to subsection (2)(c), and after "new production" inserted "and production from horizontally completed wells"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**7-14-2735. Lien arising from assessments.** (1) All of the lands in each part are subject to a lien for all of the assessments of that part until they have been paid.

(2) The assessment is a first lien on the land described in the assessment register.

**History: (1)En. Sec. 5-411, Ch. 197, L. 1965; Sec. 32-3111, R.C.M. 1947; (2)En. Sec. 5-417, Ch. 197, L. 1954; Sec. 32-3117, R.C.M. 1947; R.C.M. 1947, 32-3111(4), 32-3117(3); amd. Sec. 23, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at end, substituted "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2738. Preparation of assessment register.** (1) When the order for improvement and construction has been made by the board, the committee and the department of revenue shall apportion the estimated cost and expenses to the land in the district.

(2) Within 30 days before the letting of the contract, the department shall report to and file with the board and the treasurer an assessment register in duplicate. It must contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known.

**History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part); amd. Sec. 24, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "department of revenue" for "county assessor"; in (2) substituted "department" for "assessor" and "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2739. Notice of preparation of assessment register.** As soon as the assessment register is reported and filed, the board shall publish notice as provided in 7-1-2121. The notice must notify all persons interested that the assessment register has been filed and require them to appear at the office of the board at the county seat at a time not less than 15 days from the date of the last publication of the notice to make objections.

**History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(1); amd. Sec. 25, Ch. 349, L. 1985; amd. Sec. 25, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in two places substituted "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2740. Hearing on assessment register.** At the time fixed, the board shall meet. If no objections have been filed, the board shall make an order confirming the assessment register. If written objections, properly verified, have been filed, the board shall hear the objections, receiving testimony from any party involved.

**History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(2); amd. Sec. 26, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, after "board", deleted "and the assessor" and at end of second sentence substituted "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2742. Correction of errors — approval of assessment register.** (1) After the hearing, the board shall make any corrections as appear just to apportion the assessment to the benefit to be received.

(2) The board shall then make and enter an order approving and certifying the assessment register.

**History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(1); amd. Sec. 27, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at end, substituted "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2743. Levy of assessments.** With the aid of the department of revenue, the board shall levy and assess the amounts on the assessment register against the parcels of land or parts of parcels. The department shall enter in the property tax record the amounts levied and assessed.

**History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(2); amd. Sec. 28, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence substituted "department of revenue" for "assessor" and "register" for "roll." and inserted last sentence relating to entry of amounts levied and assessed; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2744. Mode of payment of assessment — immediate payment.** (1) If immediate payment is chosen, the board shall deliver the assessment register to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in the clerk's office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for 2 consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(3) Failure to mail notice is not fatal to the assessment when it has been published.

(4) The notice must state the following:

(a) The assessment register has been certified to the treasurer for collection.

(b) Unless payment is made within 30 days from the date of the notice, the payment will become delinquent and bears interest at the rate of 10% per annum.

(c) If the assessment is not paid before it becomes delinquent, a penalty of 5% must be added, as well as the interest on the annual tax roll for the current year.

(d) The interest and penalty must be collected together with the additional charges as are authorized to be charged and collected on other delinquent taxes.

(e) The land assessed must be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

**History: (1) thru (3)En. Sec. 5-419, Ch. 197, L. 1965; Sec. 32-3119, R.C.M. 1947; (4)En. Sec. 5-420, Ch. 197, L. 1965; Sec. 32-3120, R.C.M. 1947; R.C.M. 1947, 32-3119, 32-3120; amd. Sec. 29, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) and (4)(a) substituted "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2745. Mode of payment of assessment — installment payments.** (1) Installment payments must be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments must be in the form of bonds that draw interest, not to exceed the limitations of 17-5-102, per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment register.

(4) The board shall, at the time of levying the assessment and in the order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order must specify the number of installments, which must be equal to the number of years for which the bonds may run.

(5) Each year, the treasurer shall collect one of the installments, together with the interest due on that installment and the interest due on the future installments.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment are applicable to installment payments.

**History: (1), (2)En. Sec. 5-418, Ch. 197, L. 1965; Sec. 32-3118, R.C.M. 1947; (3) thru (6)En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971; Sec. 32-3121, R.C.M. 1947; R.C.M. 1947, 32-3118(part), 32-3121; amd. Sec. 6, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 23, Ch. 370, L. 1987; amd. Sec. 30, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3), at end, substituted "register" for "roll"; in (4), near beginning after "The board", deleted "and the assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-14-2755. Notice of use of bonds.** (1) If the board provides that payment of costs must be made by the issuance of bonds, the treasurer shall publish notice for 2 consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice must state that:

(a) the assessment register has been certified to the treasurer for collection;

(b) unless payment of the whole amount of the assessment is made within 30 days from the date of the notice, special bonds must be issued against the lands in the district for the payment of the assessment;

(c) if the bonds are issued, they will be payable in annual installments with interest on the bonds at the rate provided in the bonds.

**History: En. Sec. 5-424, Ch. 197, L. 1965; R.C.M. 1947, 32-3124; amd. Sec. 31, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2)(a) substituted "register" for "roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, has the power and duty to contract an indebtedness in behalf of a county, upon the credit of the county, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the amount of taxes levied on new production, production from horizontally completed wells, and incremental production divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%, plus the amount of value represented by new production and production from horizontally completed wells exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds.

**History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part); amd. Sec. 54, Ch. 614, L. 1981; amd. Sec. 10, Ch. 695, L. 1985; amd. Sec. 6, Ch. 655, L. 1987; amd. Sec. 71, Ch. 11, Sp. L. June 1989; amd. Sec. 15, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near middle of (2), after "amount of", substituted "taxes levied on new production, production from horizontally completed wells, and incremental production" for "interim production and new production taxes levied", inserted reference to subsection (2)(c), and after "new production" inserted "and production from horizontally completed wells"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**13-1-203. Chief election officer to advise, assist, and train.** The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. The secretary of state shall hold at least one workshop every 2 years to provide training and assistance to election administrators. Election administrators must be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, the workshops may be held in several sessions at separate locations in the state.

**History: En. Sec. 13, Ch. 571, L. 1979; amd. Sec. 32, Ch. 370, L. 1987; amd. Sec. 1, Ch. 4, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 4 in second sentence, after "workshop", substituted "every 2 years" for "each year"; and made minor changes in style. Amendment effective January 1, 1994.

**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) "Department" means the department of revenue provided for in 2-15-1301.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, and domestic ungulates.

(l) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(m) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(n) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(o) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of any company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(p) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining to the mines, minerals, quarries, and timber.

(q) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(r) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board.

**History: (1)En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R.C.M. 1921; Cal. Pol. C. Sec. 3617; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977; Sec. 84-101, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 3, L. 1923; re-en. Sec. 2122.4, R.C.M. 1935; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977; Sec. 84-704, R.C.M. 1947; R.C.M. 1947, 84-101, 84-704; amd. Sec. 1, Ch. 39, L. 1979; amd. Sec. 14, Ch. 693, L. 1979; amd. Sec. 1, Ch. 578, L. 1981; amd. Sec. 2, Ch. 488, L. 1983; amd. Sec. 1, Ch. 632, L. 1983; amd. Sec. 1, Ch. 20, L. 1985; amd. Sec. 1, Ch. 570, L. 1985; amd. Sec. 1, Ch. 743, L. 1985; amd. Sec. 35, Ch. 370, L. 1987; amd. Sec. 1, Ch. 613, L. 1987; amd. Sec. 2, Ch. 659, L. 1987; amd. Sec. 1, Ch. 10, Sp. L. June 1989; amd. Sec. 169, Ch. 411, L. 1991; amd. Sec. 6, Ch. 680, L. 1991; amd. Sec. 1, Ch. 705, L. 1991; amd. Sec. 8, Ch. 783, L. 1991; amd. Sec. 4, Ch. 379, L. 1993; amd. Sec. 1, Ch. 417, L. 1993; amd. Sec. 32, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 inserted definition of Department; in definition of improvements, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendments:* Chapter 379 inserted definitions of gas and natural gas; and made minor changes in style.

Chapter 417 in definition of livestock inserted "llamas, alpacas, bison, and domestic ungulates"; and made minor changes in style.

**15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.** (1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for tax year 1989;

(b) the number of mills levied in the jurisdiction for tax year 1990;

(c) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 and for each tax year thereafter, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, and miscellaneous taxing district and the state of Montana.

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b).

**History: En. Sec. 9, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 773, L. 1991; amd. Sec. 1, Ch. 499, L. 1993; amd. Sec. 33, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1)(a), (1)(b), (1)(c), and (1)(d) substituted reference to tax years for reference to taxable years; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 499 deleted former (1) that read: "(1) (a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.

(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989"; substituted (3)(a) requiring Department to remit to the County Treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31 for former language that read: "For taxable year 1990 and for each year thereafter, the department shall remit to the county treasurer the base amount of revenue reimbursable, determined pursuant to subsection (3), as follows:

(a) on or before November 30, 1990, and on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county"; inserted (3)(b) concerning remittance for tax year 1993 and succeeding years; at end of (4), after "jurisdiction", substituted "as calculated by the department" for "in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed"; substituted (5) defining taxing jurisdiction as including a county, city, school district, tax increment financing district, and miscellaneous taxing district and the State of Montana for former definition that read: "For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana"; near end of (6) substituted "eligible taxing jurisdictions" for "school districts and local governments"; inserted (7) providing that a taxing jurisdiction existing in tax year 1989 but no longer in existence is not entitled to reimbursement, that a taxing jurisdiction that existed in tax year 1989 that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new jurisdiction, and that a taxing jurisdiction not in existence in tax year 1989 is not entitled to reimbursement unless created as the result of the splitting of a taxing jurisdiction that was in existence in tax year 1989; and made minor changes in style.

*Applicability:* Section 2, Ch. 499, L. 1993, provided: "[This act] applies to all reimbursements beginning with tax year 1993. [This act] does not affect the reimbursement payment due May 31, 1993, or any previous reimbursement. The first reimbursement payment under [this act] is payable on or before November 30, 1993."

**15-1-201. Administration of revenue laws.** (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapter 70, and over any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(c) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and other information as may be needful and helpful in the work of the department in a form prescribed by the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered needful or helpful.

**History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part); (1)(b), (1)(c)En. Sec. 10, Ch. 743, L. 1985; amd. Sec. 21, Ch. 10, L. 1993; amd. Sec. 34, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1)(a), after "and over", deleted "its agents and"; in (1)(c), after "adopt rules", deleted "specifying the methodology to be used in conducting sales assessment ratio studies and in"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 10 in (1)(a) removed brackets around reference to Title 15, chapter 70; and made minor changes in style.

**15-1-202. Enforcement of revenue laws.** (1) The department may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes, except Title 15, chapter 70, governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws.

**History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(6), (7); amd. Sec. 4, Ch. 623, L. 1989; amd. Sec. 22, Ch. 10, L. 1993; amd. Sec. 35, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "complaints to be made against", deleted "assessors and other"; at end of (1) and (2) deleted "or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106"; deleted (3) that read: "(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amend-

ments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 10 in (1) removed brackets around reference to Title 15, chapter 70.

**15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever the information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report.

**History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(16); amd. Sec. 1, Ch. 584, L. 1979; amd. Sec.**

**1, Ch. 500, L. 1987; amd. Sec. 21, Ch. 112, L. 1991; amd. Sec. 23, Ch. 10, L. 1993; amd. Sec. 18, Ch. 349, L. 1993; amd. Sec. 36, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2)(a)(ii), after "department", deleted "or its agent". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendments:* Chapter 10 in (7), after "report", inserted "prepared by the department of transportation"; and made minor changes in style.

Chapter 349 near beginning of first sentence of (1) substituted "make available" for "as provided in 5-11-210, submit" and inserted second sentence that read: "The department shall follow the provisions of 5-11-210 in preparing the report"; inserted (8) requiring inclusion of inheritance tax information; and made minor changes in style.

**15-1-303. Penalty for refusal to furnish information.** (1) If a person refuses to allow inspection of any books or records when requested by the department or refuses or neglects to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make a determination and assessment of the property as in its judgment appears to be just and equitable and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for the refusal or neglect. The department shall immediately notify the person assessed of its action, either by certified mail or by personal service of the notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, the taxpayer may request an informal conference with the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure to supply the information requested by the department. Within 10 days after the conference, the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of the failure to supply the information that the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment or, if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When deciding an

appeal brought under this subsection, the state tax appeal board shall follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

**History: En. Sec. 14, Ch. 3, L. 1923; re-en. Sec. 2122.14, R.C.M. 1935; amd. Sec. 58, Ch. 405, L. 1973; R.C.M. 1947, 84-714; amd. Sec. 1, Ch. 357, L. 1985; amd. Sec. 1, Ch. 227, L. 1993; amd. Sec. 37, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near beginning after "requested by the department", deleted "or its authorized agent"; in (2)(a), after "conference with" and after "the conference", deleted "the agent of"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 227 in (1), near end, deleted provision for registered mail; in (2)(a), near beginning after "assessment", deleted "or by April 1, whichever is later"; in (3) substituted "30 calendar days" for "20 days"; and made minor changes in style. Amendment effective March 30, 1993.

*Effective Date — Retroactive Applicability:* Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

**15-1-403. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2270, R.C.M. 1935; amd. Sec. 85, Ch. 405, L. 1973; R.C.M. 1947, 84-4503; amd. Sec. 5, Ch. 501, L. 1981; amd. Sec. 2, Ch. 811, L. 1991.**

**15-1-506. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R.C.M. 1921; re-en. Sec. 2042, R.C.M. 1935; amd. Sec. 21, Ch. 405, L. 1973; R.C.M. 1947, 84-448.**

**15-1-517 through 15-1-520 reserved.**

**15-1-521. Property valuation improvement fund.** There is an account in the state special revenue fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and taxation process through improvements in technology and administration. The department shall deposit fees collected pursuant to 2-6-110(4) in the account.

**History: En. Sec. 2, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that this section applies to tax years after December 31, 1993.

*Effective Date:* Section 173(1), Ch. 27, Sp. L. November 1993, provided that this section is effective January 1, 1994.

**15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearing officer. The board member or hearing officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the state board or the member or hearing officer designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received. The cost of taking and transcribing testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

**History: En. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; R.C.M. 1947, 84-709; amd. Sec. 1, Ch. 611, L. 1979; amd. Secs. 1, 2, Ch. 471, L. 1987; amd. Sec. 1, Ch. 247, L. 1991; amd. Sec. 4, Ch. 594, L. 1993; amd. Sec. 1, Ch. 15, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 15 in (1), at beginning of second sentence before "person", substituted "If the appearance provisions of 15-15-103 have been complied with, a" for "Any". Amendment effective January 1, 1994.

*Applicability:* Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

*1993 Amendment:* Chapter 594 deleted former second sentence of (4) that read: "The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review"; and inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review.

**15-6-207. Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock that have not attained the age of 24 months as of February 1;

(e) swine that have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; and

(g) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area.

**History: En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch. 576, L. 1977; R.C.M. 1947, 84-202(5); amd. Sec. 8, Ch. 663, L. 1979; amd. Sec. 3, Ch. 570, L. 1985; amd. Sec. 1, Ch. 627, L. 1985; amd. Sec. 2, Ch. 660, L. 1987; amd. Sec. 5, Ch. 598, L. 1989; amd. Sec. 38, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1)(d) substituted "February" for "March"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

**15-6-208. Mineral exemptions.** (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year are exempt from property taxation on one-half of the merchantable value.

(3) (a) New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.

(b) Production from horizontally completed wells, as defined in 15-23-601, is exempt from taxation for the first 18 months of production as provided in 15-23-612.

(4) The first 1,000 tons of travertine and building stone extracted from a mine in a tax year are exempt from property taxation.

**History: (1)En. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R.C.M. 1921; Cal. Pol. C. Secs. 3607 and 3611; amd. Sec. 1, Ch. 98, L. 1931; re-en. Sec. 1998, R.C.M. 1935; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973; amd. Sec. 1, Ch. 376, L. 1974; Clarified Sec. 1, Ch. 8, L. 1975; amd. Sec. 1, Ch. 325, L. 1975; amd. Sec. 1, Ch. 341, L. 1975; amd. Sec. 1, Ch. 442, L. 1975; amd. Sec. 3, Ch. 507, L. 1975; amd. Sec. 7, Ch. 548, L. 1975; amd. Sec. 2, Ch. 52, L. 1977; amd. Sec. 1, Ch. 87, L. 1977; amd. Sec. 2, Ch. 112, L. 1977; amd. Sec. 2, Ch. 126, L. 1977; amd. Sec. 2, Ch. 393, L. 1977; amd. Sec. 1, Ch. 413, L. 1977; amd. Sec. 1, Ch. 492, L. 1977; amd. Sec. 2, Ch.**

**576, L. 1977; Sec. 84-202, R.C.M. 1947; (2)En. 84-212 by Sec. 6, Ch. 498, L. 1977; Sec. 84-212, R.C.M. 1947; R.C.M. 1947, 84-202(7), 84-212; amd. Sec. 1, Ch. 303, L. 1983; amd. Sec. 7, Ch. 655, L. 1987; amd. Sec. 1, Ch. 89, L. 1993; amd. Sec. 1, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 inserted (3)(b) to provide a temporary tax exemption for production from horizontally completed wells; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*1993 Amendment:* Chapter 89 inserted (4) exempting from property taxation the first 1,000 tons of travertine and building stone extracted in a tax year; and made minor changes in style.

*Applicability:* Section 2, Ch. 89, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

**15-7-102. Notice of classification and appraisal to owners — appeals.** (1) The department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) (a) The department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 15 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as

to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 15 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order.

**History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973; R.C.M. 1947, 84-429.11; amd. Sec. 3, Ch. 710, L. 1979; amd. Sec. 1, Ch. 105, L. 1983; amd. Sec. 11, Ch. 526, L. 1983; amd. Sec. 3, Ch. 29, Sp. L. June 1986; amd. Sec. 2, Ch. 613, L. 1987; amd. Sec. 1, Ch. 9, L. 1989; amd. Sec. 1, Ch. 636, L. 1989; amd. Secs. 1, 7, Ch. 680, L. 1991; amd. Sec. 2, Ch. 227, L. 1993; amd. Sec. 8, Ch. 594, L. 1993; amd. Sec. 39, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near beginning after "department shall", deleted "through its agent as specified in subsection (2)"; in (2)(a), near beginning, substituted "department" for "county assessor"; in (4) and (4)(b), after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendments:* Chapter 227 in (1), near beginning, substituted "owner or purchaser" for "owner and purchaser"; in (3), in first sentence, substituted "request and assessment review by submitting an objection in writing to the department" for "submit his objection in writing to the department's agent" and inserted provision that the submission be on forms provided by the Department within 15 days after receipt of the notice of classification and appraisal, inserted second sentence providing that the review be informal and is not subject to contested case procedure, at beginning of third sentence substituted "As a part of the review" for "In an objection to the appraisal of the property" and near end, after "taxpayer", substituted "in support of the taxpayer's opinion as to" for "as evidence of", in fourth sentence, after "place of", substituted "the review" for "hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing", and near beginning of fifth sentence substituted "review" for "hearing"; in (4), near beginning, substituted "review" for "hearing"; in (5), at beginning of last sentence, substituted "The department" for "Each county appraiser"; in (6), in first sentence after "department", inserted "after the review provided for in subsection (3)" and before "appeal" inserted "first" and substituted second sentence providing that appeal to county tax appeal board must be filed within 15 days after notice is mailed to the taxpayer for "The property owner may appeal the base valuation and the classification determination"; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 594 inserted (2)(b) requiring that a notice must advise the taxpayer that in order to be eligible for a refund, taxes must be paid under protest; and made minor changes in style.

*Effective Date — Retroactive Applicability:* Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

**15-7-106. Courses of instruction, examination, and certification — additional courses.** (1) The department shall offer courses in the principles, methods, and techniques of appraising for property tax purposes property in three fields:

(a) residential property;

(b) agricultural land; and

(c) commercial and industrial property.

(2) The department shall conduct an examination for those who have completed a course of instruction in any of the three fields listed in subsection (1).

(3) A person may not take the examination for appraising commercial and industrial property unless the person holds a certificate in appraising residential property.

(4) The department may schedule and conduct other courses within the state for appraisers, assessors, and department personnel for training in the following subjects:

(a) personal property assessment;

(b) property tax administration; and

(c) personnel management, fiscal management, public relations, professional ethics, and related management principles.

(5) The department shall issue a certificate to each appraiser, assessor, or other person successfully completing a course of instruction and passing an examination in any of the fields provided for in subsection (1) or any subject provided for in subsection (4).

**History: En. Sec. 2, Ch. 602, L. 1979; amd. Sec. 40, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at beginning, deleted "Twice each year"; deleted former (3) that read: "(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields"; inserted (4) relating to conducting other courses; inserted (5) concerning certificate of completion; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-107. Certification required.** (1) An appraiser employed by the department to appraise:

(a) residential property shall obtain a certificate in appraising residential property;

(b) agricultural land shall obtain a certificate in appraising agricultural land; and

(c) commercial and industrial property shall obtain a certificate in appraising commercial and industrial property.

(2) The department may promulgate rules requiring appraisers to complete continuing education courses in laws, rules, and methods relating to appraisal.

**History: En. Sec. 3, Ch. 602, L. 1979; amd. Sec. 41, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), at beginning, deleted "Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-208. Reclassification by department.** The department may reclassify land as nonagricultural upon giving due notice to the property owner or any purchaser under contract for deed under the provisions of 15-7-102. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department to reclassify the land as agricultural by completing a form prescribed by the department and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202.

**History: En. 84-437.15 by Sec. 4, Ch. 56, L. 1974; R.C.M. 1947, 84-437.15; amd. Sec. 12, Ch. 526, L. 1983; amd. Sec. 42, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at beginning of first sentence, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-209. Reclassification by owner — lien.** (1) Whenever land that is or has been in agricultural use and is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the department.

(2) The department shall provide, in a form eligible for recording, releases of lien, for those liens attributable to the former rollback tax, and the department shall present the releases to the county clerk and recorder for recording.

**History: En. 84-437.16 by Sec. 5, Ch. 56, L. 1974; R.C.M. 1947, 84-437.16; amd. Sec. 1, Ch. 201, L. 1981; amd. Sec. 1, Ch. 423, L. 1981; amd. Sec. 1, Ch. 585, L. 1981; amd. Sec. 43, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at end of (1) and at beginning of (2) substituted "department" for "county assessor"; in (2), near end, substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-213. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 14, Ch. 512, L. 1973; R.C.M. 1947, 84-437.12.**

**15-7-304. Report of transfers — change of ownership records.** (1) All transfers of real property that are not evidenced by a recorded document, except those transfers otherwise provided for in this part, must be reported to the department on the form prescribed.

(2) The department is not required to change any ownership records used for the assessment or taxation of real property unless the department has received a transfer certificate from the clerk and recorder or a transfer has been reported to the department as provided by rule.

**History: En. 84-7304 by Sec. 4, Ch. 528, L. 1975; R.C.M. 1947, 84-7304; amd. Sec. 44, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "department", deleted "or its agent"; in (2), at beginning, deleted "No agent of" and at end substituted "the department as provided by rule" for "him"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-308. Disclosure of information restricted.** The certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

**History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308; amd. Sec. 45, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "clerk and recorder" deleted "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-402. Application for residential appraisal of certain land and improvements.** (1) Any person wishing to ensure that the person's residential land and improvements are appraised as residential may file a signed application with the department.

(2) In the application, the owner shall:

(a) assert that the property is used only for human habitation and is the principal residence of the owner;

(b) sign a statement pledging that the property will continue to be used as residential property; and

(c) show that the statement has been filed with the county clerk and recorder of the county in which the property is located.

(3) When the department has approved an application for residential use, the department and its agents shall consider only those indicia of value that the property has for residential use.

(4) Failure to file an application under this section may not result in reclassification on real property unless there has been an actual change in use.

**History: En. Sec. 2, Ch. 702, L. 1979; amd. Sec. 46, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "department", deleted "or its agents"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-7-403. Rollback tax — computation.** (1) (a) If land and improvements appraised as residential as a result of an application filed under 15-7-402 are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property at the time of the change in use.

(b) As used in this section, "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period.

**History: En. Sec. 3, Ch. 702, L. 1979; amd. Sec. 47, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at beginning, substituted "department" for "department's agent". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-102. County to furnish office space.** The county commissioners of each county shall provide existing office space in the county courthouse for use by the department's assessment and appraisal staff, if space is reasonably available. If space is not reasonably available in the courthouse, the department may contract for the procurement of suitable space.

**History: (1), (2)En. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; (3)En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R.C.M. 1921; Cal. Pol. C. Sec. 3658; re-en. Sec. 2056, R.C.M. 1935; amd. Sec. 32, Ch. 405, L. 1973; Sec. 84-509, R.C.M. 1947; R.C.M. 1947, 84-402(1), (4), 84-509; amd. Sec. 48, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 deleted (1) that read: "(1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection"; deleted (3) that read: "(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund"; substituted "department's assessment and appraisal staff" for "county assessor, his deputies and staff, and the state appraiser and staff"; deleted former last sentence that read: "Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-103. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; R.C.M. 1947, 84-708.1(part).**

**15-8-104. Department audit and review of taxable value — costs paid by department.** (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The department may conduct reviews of the assessment of all commercial personal property to ensure that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the review conducted by the department may be directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of any audit or review performed under subsection (1) or (2) must be paid by the department.

**History: (1)En. 84-708.9 by Sec. 1, Ch. 235, L. 1975; amd. Sec. 1, Ch. 107, L. 1977; Sec. 84-708.9, R.C.M. 1947; (2)En. 84-708.10 by Sec. 2, Ch. 235, L. 1975; Sec. 84-708.10, R.C.M. 1947; R.C.M. 1947, 84-708.9, 84-708.10; amd. Sec. 1, Ch. 222, L. 1979; amd. Sec. 10, Ch. 634, L. 1979; amd. Sec. 3, Ch. 613, L. 1981; amd. Sec. 9, Ch. 743, L. 1985; amd. Sec. 49, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), in first sentence, substituted "may conduct reviews" for "shall conduct audits" and in last sentence substituted "review" for "audit" and "may be directed" for "shall be primarily directed"; in (3), after "audit", inserted "or review"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-105. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 2, Ch. 623, L. 1989.**

**15-8-106. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 3, Ch. 623, L. 1989.**

**15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, or 15-23-517.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

**History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R.C.M. 1921; Cal. Pol. C. Sec. 3627; re-en. Sec. 2001, R.C.M. 1935; amd. Sec. 2, Ch. 512, L. 1973; amd. Sec. 1, Ch. 56, L. 1974; amd. Sec. 1, Ch. 209, L. 1975; amd. Sec. 1, Ch. 436, L. 1975; amd. Sec. 5, Ch. 498, L. 1977; amd. Sec. 21, Ch. 566, L. 1977; R.C.M. 1947, 84-401; amd. Sec. 11, Ch. 634, L. 1979; amd. Secs. 10, 13, Ch. 686, L. 1979; amd. Sec. 17, Ch. 693, L. 1979; amd. Sec. 66, Ch. 575, L. 1981; amd. Sec. 2, Ch. 578, L. 1981; amd. Sec. 3, Ch. 323, L. 1983; amd. Sec. 1, Ch. 463, L. 1985; amd. Sec. 6, Ch. 516, L. 1985; amd. Sec. 6, Ch. 681, L. 1985; amd. Sec. 7, Ch. 743, L. 1985; amd. Sec. 4, Ch. 7, Sp. L. March 1986; amd. Sec. 3, Ch. 34, Sp. L. June 1986; amd. Sec. 5, Ch. 35, Sp. L. June 1986; amd. Sec. 37, Ch. 370, L. 1987; amd. Sec. 6, Ch. 453, L. 1987; amd. Sec. 1, Ch. 593, L. 1987; amd. Sec. 3, Ch. 618, L. 1987; amd. Sec. 4, Ch. 531, L. 1989; amd. Sec. 4, Ch. 695, L. 1991; amd. Sec. 16, Ch. 773, L. 1991; amd. Sec. 10, Ch. 783, L. 1991; amd. Sec. 4, Ch. 506, L. 1993; amd. Sec. 50, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2)(c), after "kinds", deleted "including but not limited to boats and all watercraft"; in introductory clause of (3), after "department", deleted "or its agents"; deleted former (6)(d) that read: "Beginning January 1, 1990, and ending December 31, 1993, properties in 15-6-143, under class ten, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland"; in (6)(d), at beginning, deleted "Beginning January 1, 1994"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 506 in (6)(a), at end, inserted "or 15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

*Effective Date — Retroactive Applicability:* Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

**15-8-112. Assessments to be made on classification and appraisal.** (1) The assessments of all lands, all city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property that it is required to assess centrally. The department shall apportion the assessments to the various counties, and its determination is final except as to the right of review in the state tax appeal board or the proper court.

**History: (1)En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973; Sec. 84-429.9, R.C.M. 1947; (2)En. Sec. 3, Ch. 61, L. 1925; re-en. Sec. 2001.3, R.C.M. 1935; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973; amd. Sec. 8, Ch. 98, L. 1977; amd. Sec. 50, Ch. 566, L. 1977; Sec. 84-404, R.C.M. 1947; R.C.M. 1947, 84-404, 84-429.9; amd. Sec. 51, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) substituted "apportion the assessments to" for "transmit such determination and assignment to its agents in"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-113. Appeal from percentage assignment.** If any taxpayer disagrees with the percentage assignment made by the department, the taxpayer may appeal to the county tax appeal board on the percentage assignment the same as a taxpayer may now appeal on valuations and also may appeal from the county tax appeal board to the state tax appeal board, whose findings are final except as to the right of review in the proper courts.

**History: En. Sec. 2, Ch. 61, L. 1925; re-en. Sec. 2001.2, R.C.M. 1935; amd. Sec. 3, Ch. 405, L. 1973; R.C.M. 1947, 84-403; amd. Sec. 52, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "department" deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-114. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 5, Ch. 61, L. 1925; re-en. Sec. 2001.5, R.C.M. 1935; amd. Sec. 3, Ch. 516, L. 1973; R.C.M. 1947, 84-405.**

**15-8-115. Department to defend property tax appeals — costs and judgments.** (1) The department is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the person designated to receive service for the department.

(2) Costs, if any, must be assessed against the department and not against a local taxing unit.

(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded.

**History: En. Sec. 1, Ch. 589, L. 1979; amd. Sec. 1, Ch. 398, L. 1983; amd. Sec. 53, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), at beginning after "department", deleted "or its designee" and at end substituted "person designated to receive service for the department" for "local county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-201. General assessment day.** (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department shall assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1. The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1. A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(2) The procedure provided by this section does not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes held by a distributor or dealer of mobile homes as stock in trade; and

(g) property subject to the provisions of 15-16-203.

(3) Credits must be assessed as provided in 15-1-101(1)(f).

**History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L.**

**1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(1) thru (3); amd. Sec. 1, Ch. 663, L. 1979; amd. Sec. 22, Ch. 712, L. 1979; amd. Sec. 12, Ch. 614, L. 1981; amd. Sec. 5, Ch. 20, L. 1985; amd. Sec. 7, Ch. 516, L. 1985; amd. Sec. 38, Ch. 370, L. 1987; amd. Sec. 6, Ch. 611, L. 1987; amd. Sec. 3, Ch. 649, L. 1987; amd. Sec. 2, Ch. 570, L. 1991; amd. Sec. 54, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in two places after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-202. Motor vehicle assessment.** (1) The department shall, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, and campers or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles as provided by law, subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles must be made in accordance with 61-3-503. The motor vehicles must be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date, whichever is applicable.

(2) A tax may not be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1.

**History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R.C.M. 1921; Cal. Pol. C. Sec. 3628; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; re-en. Sec. 2002, R.C.M. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 4, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973; amd. Sec. 10, Ch. 74, L. 1975; amd. Sec. 2, Ch. 327, L. 1975; amd. Sec. 8, Ch. 388, L. 1975; amd. Sec. 2, Ch. 507, L. 1975; amd. Sec. 3, Ch. 126, L. 1977; amd. Sec. 2, Ch. 211, L. 1977; amd. Sec. 5, Ch. 260, L. 1977; amd. Sec. 51, Ch. 566, L. 1977; R.C.M. 1947, 84-406(4); amd. Sec. 23, Ch. 712, L. 1979; amd. Sec. 1, Ch. 262, L. 1981; amd. Sec. 13, Ch. 614, L. 1981; amd. Sec. 2, Ch. 433, L. 1985; amd. Sec. 8, Ch. 516, L. 1985; amd. Sec. 7, Ch. 611, L. 1987; amd. Sec. 55, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near beginning after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-205. Initial assessment of class four trailer and mobile home property — when.** The department shall assess all class four trailer and mobile home property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana.

**History: En. Sec. 5, Ch. 632, L. 1983; amd. Sec. 10, Ch. 773, L. 1991; amd. Sec. 56, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at beginning substituted "department" for "county assessor". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-301. Statement — what to contain.** (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1. The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situated or in which the property is liable to taxation and, if liable to taxation in the county in which the statement is made, also the city, town, school district, road district, or other revenue districts in which the property is situated;

(e) an exact description of all lands, improvements, and personal property;

(f) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement but the statement must show the name of the person or officer who made the statement in which the property is included.

(3) The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation.

**History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R.C.M. 1921; Cal. Pol. C. Sec. 3629; re-en. Sec. 2003, R.C.M. 1935; amd. Sec. 5, Ch. 405, L. 1973; amd. Sec. 9, Ch. 388, L. 1975; R.C.M. 1947, 84-409; amd. Sec. 4, Ch. 649, L. 1987; amd. Sec. 57, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in introductory clause of (1), after "department", substituted "may" for "or its agent must"; in (1)(e) substituted "improvements, and personal property" for "in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government; improvements and personal property; all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby"; deleted former (1)(f) that read: "(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-302. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R.C.M. 1921; Cal. Pol. C. Sec. 3630; re-en. Sec. 2004, R.C.M. 1935; amd. Sec. 6, Ch. 405, L. 1973; amd. Sec. 10, Ch. 388, L. 1975; R.C.M. 1947, 84-410.**

**15-8-303. Statement to be completed and returned to department.** The department may deliver the statement specified in 15-8-301 to the person owning taxable property and require the person, within an appointed time, to return the statement, properly filled out. The department shall notify the person making the statement of any corrections made by the department.

**History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R.C.M. 1921; Cal. Pol. C. Sec. 3631; re-en. Sec. 2005, R.C.M. 1935; amd. Sec. 7, Ch. 405, L. 1973; R.C.M. 1947, 84-411; amd. Sec. 58, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at beginning of first sentence deleted "agent of the" and substituted "may deliver the statement specified in 15-8-301 to the person owning taxable property" for "may fill out the statement at the time he presents it or he may deliver it to the person"; in second sentence substituted "department shall notify" for "agent must either in person or by mail deliver to" and at end substituted "department" for "agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-304. Enforcement powers of department.** (1) The department may:

(a) require any person in the state to make and subscribe an affidavit, giving the person's name, place of residence, and post-office address;

(b) subpoena and examine any person in relation to any statement furnished to the department or any statement that discloses property that is assessable in the state.

(2) The department may exercise this power in any county where the person whom it desires to examine may be found but may not require the person to appear before it in any county other than that in which the subpoena is served.

**History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R.C.M. 1921; Cal. Pol. C. Sec. 3632; re-en. Sec. 2006, R.C.M. 1935; amd. Sec. 8, Ch. 405, L. 1973; R.C.M. 1947, 84-412(part); amd. Sec. 59, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 deleted (3) that read: "(3) In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-307. Land assessment.** (1) Except as provided in subsection (2), land must be assessed in parcels or subdivisions not exceeding 640 acres, and tracts of land containing more than 640 acres that have been sectionized by the United States government must be assessed by sections or fractions of sections.

(2) If the department receives the written consent of all persons with an ownership interest, the department may assess multiple parcels or tracts of land with common ownership collectively as a single tract of land.

(3) The department shall itemize in the property tax record the description of each 640 acres of land or less, the number of acres, the description, the value of the land, the value of improvements, and the total value. The property tax record must itemize the description of each town or city lot and the value of the lot and any improvements on the lot, except that a lot and improvements must be separately assessed when required under 15-8-111. If all of the unimproved lots of the same value are located in one block or are owned by the same party, the lots may be described and assessed in a single unit in the manner prescribed for each lot. Each parcel and lot must be segregated in the property tax record to correlate the description of the parcel or lot to the total value of the parcel or lot and any improvements on the parcel or lot.

**History:** **En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R.C.M. 1921; Cal. Pol. C. Sec. 3628; re-en. Sec. 2023, R.C.M. 1935; amd. Sec. 13, Ch. 405, L. 1973; amd. Sec. 2, Ch. 436, L. 1975; R.C.M. 1947, 84-429(part); amd. Sec. 60, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), at beginning, inserted exception clause; inserted (2) relating to assessment of multiple parcels; in (3), throughout subsection, deleted references to columns and lines, at beginning, after "department", deleted "or its agent" and substituted "itemize in the property tax record" for "set aside one line in the assessment book for", and near middle substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-402. Property of person.** The property of every person must be assessed in the county where the property is located and must be assessed in the name of that person.

**History:** **En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907; re-en. Sec. 2013, R.C.M. 1921; Cal. Pol. C. Sec. 3641; re-en. 2013, R.C.M. 1935; R.C.M. 1947, 84-419; amd. Sec. 61, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in two places substituted "person" for "firm and corporation"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-601. Assessment revision — conference for review.** (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within 15 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal to the county tax appeal board at its next meeting.

(4) The department shall enter in the property tax record all changes and corrections made by it.

**History: (1) thru (3), (5)En. Sec. 11, Ch. 3, L. 1923; re-en. Sec. 2122.11, R.C.M. 1935; amd. Sec. 56, Ch. 405, L. 1973; amd. Sec. 4, Ch. 155, L. 1977; Sec. 84-711, R.C.M. 1947; (4)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R.C.M. 1921; Cal. Pol. C. Sec. 3682; re-en. Sec. 2121, R.C.M. 1935; amd. Sec. 44, Ch. 405, L. 1973; Sec. 84-610, R.C.M. 1947; R.C.M. 1947, 84-610, 84-711; amd. Sec. 1, Ch. 37, L. 1991; amd. Sec. 5, Ch. 811, L. 1991; amd. Sec. 62, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) substituted "department proposes to revise the statement" for "department or its agent proposes to increase the valuation of locally assessed property above the value"; in (3)(a), after "department", deleted "or its agent" and at end substituted "within 15 days" for "not less than 15 or more than 30 days"; in (3)(b) and (3)(c), before "review", inserted "revision"; in (4) substituted "shall" for "must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to" and substituted "in the property tax record" for "upon the assessment book"; deleted (5) that read: "(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-701. Property tax record — definition — listing property in.** (1) Unless the context clearly indicates otherwise, the term "property tax record" means the record that is kept in each county by the department and that contains the information described in subsection (2). The term includes records referred to as an "assessment book" or "assessment roll" and, in a county in which the property tax record is kept on a computer system, the information on the system analogous to the information described in subsection (2).

(2) The department shall prepare a property tax record with appropriate headings, in which must be listed all property within the state and in which must be specified, by an appropriate heading:

(a) the name of the person to whom the property is assessed;

(b) land by description sufficient to identify it, the locality, and the improvements on the land;

(c) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail the personal property does not invalidate the assessment;

(d) the assessed value of real estate;

(e) the assessed value of improvements on land, except that land and improvements must be separately listed when required under 15-8-111;

(f) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. Taxable improvements owned by a person, located upon land exempt from taxation, must, as to the manner of assessment, be assessed as other real estate. A value may not be assessed against the exempt land, and the land may not be charged with and is not responsible for the assessment made against any taxable improvements located on the land.

(g) the assessed value of all taxable personal property;

(h) the school, road, and other revenue districts in which each piece of property assessed is situated;

(i) the total assessed value of all property;

(j) the taxable value of all property;

(k) the taxes and fees assessed against the property; and

(l) the total of each type of tax, levy, and fee.

**History: (1)En. 84-502.1 by Sec. 27, Ch. 405, L. 1973; Sec, 84-502.1, R.C.M. 1947; (2)En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R.C.M. 1921; Cal. Pol. C. Sec. 3650; re-en. Sec. 2048, R.C.M. 1935; amd. Sec. 26, Ch. 405, L. 1973; amd. Sec. 2, Ch. 209, 1975; amd. Sec. 3, Ch. 436, L. 1975; amd. Sec. 5, Ch. 126, L. 1977; Sec. 84-501, R.C.M. 1947; R.C.M. 1947, 84-501, 84-502.1; amd. Sec. 1, Ch. 253, L. 1985; amd. Sec. 63, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in first sentence, substituted "property tax record" for "assessment book", in two places substituted "subsection (2)" for "subsection (3)", and in second sentence substituted "records referred to as an "assessment book" or "assessment roll" and, in a county in which the property tax record" for "in a county wherein the assessment book"; deleted former (2) that read: "(2) The form of the assessment book must be as directed by the department"; in introductory clause of (2) substituted "property tax record" for "assessment book", after "headings" deleted "alphabetically arranged", and after "specified" deleted "in separate columns under the"; in (2)(b), after "land by", deleted "township, range, section or fractional section, and when such land is not a United States land division or subdivision, by metes and bounds or other" and after "identify it" deleted "giving an estimate of the number of acres, not exceeding in each and every tract 640 acres"; deleted former (2)(c) that read: "(c) city and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon"; in (2)(d), after "real estate", deleted "other than city or town lots"; in (2)(e), after "value of", deleted "city and town lots with"; in (2)(f), after "real estate", deleted "upon the assessment roll"; inserted (2)(j) relating to taxable value of all property; inserted (2)(k) relating to the taxes and fees assessed against the property; inserted (2)(l) relating to the total of each type of tax, levy, and fee; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-702. Persons desiring to be listed.** Lands described on the property tax record do not need to be described a second time, but any person claiming the land and desiring to be assessed for the land may have the person's name inserted with that of the person to whom the land is assessed.

**History: En. Sec. 3731, Pol. C. 1895; re-en. Sec. 2550, Rev. C. 1907; re-en. Sec. 2055, R.C.M. 1921; Cal. Pol. C. Sec. 3657; re-en. Sec. 2055, R.C.M. 1935; amd. Sec. 1, Ch. 283, L. 1975; R.C.M. 1947, 84-508; amd. Sec. 2, Ch. 366, L. 1993; amd. Sec. 64, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 366 deleted (2) that provided: "(2) When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists"; and made minor changes in style.

**15-8-704. Map book.** The department shall make maps showing public and private land for each county and shall designate the person to whom the land is assessed.

**History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R.C.M. 1921; re-en. Sec. 2051, R.C.M. 1935; amd. Sec. 28, Ch. 405, L. 1973; R.C.M. 1947, 84-504; amd. Sec. 65, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted "maps showing public and private land for each county and shall designate" for "a plat of the various blocks within any incorporated city or town in a map book and mark thereon in each subdivision the name of"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-705. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R.C.M. 1921; Cal. Pol. C. Sec. 3654; re-en. Sec. 2052, R.C.M. 1935; amd. Sec. 29, Ch. 405, L. 1973; R.C.M. 1947, 84-505.**

**15-8-706. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: (1)En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R.C.M. 1921; Cal. Pol. C. Sec. 3655; re-en. Sec. 2053, R.C.M. 1935; amd. Sec. 30, Ch. 405, L. 1973; Sec. 84-506, R.C.M. 1947; (2)En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R.C.M. 1921; Cal. Pol. C. Sec. 3656; re-en. Sec. 2054, R.C.M. 1935; amd. Sec. 31, Ch. 405, L. 1973; Sec. 84-507, R.C.M. 1947; R.C.M. 1947, 84-506, 84-507; amd. Sec. 1, Ch. 225, L. 1983; amd. Sec. 7, Ch. 598, L. 1989.**

**15-8-707. Correction of defects in property tax record.** (1) At any time after the original assessment is made and prior to a sale for delinquent taxes, omissions, errors, or defects in the property tax record may only be corrected by the department.

(2) If the correction involves an assessment of property that is the subject of pending litigation with a taxing jurisdiction within the county, the county attorney must be notified of the correction.

**History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R.C.M. 1921; Cal. Pol. C. Sec. 3881; re-en. Sec. 2058, R.C.M. 1935; amd. Sec. 34, Ch. 405, L. 1973; R.C.M. 1947, 84-511; amd. Sec. 1, Ch. 477, L. 1979; amd. Sec. 2, Ch. 17, L. 1985; amd. Sec. 66, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "the property tax record may only be corrected by the department" for "form in the assessment book may be corrected by the:

(a) department of revenue or its agent; or

(b) county assessor or county treasurer with verification from the department"; in (2) substituted "with a taxing jurisdiction within the county, the county attorney must be notified of the correction" for "the consent of the county attorney must be obtained before any correction may be made"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-709. Statement of changes to be sent to county clerk and recorder.** The department shall notify each county clerk and recorder of the changes made by the department in the property tax record of the county or any assessment contained in the property tax record, which changes are prima facie evidence of the regularity of all proceedings of the department resulting in the action that is the subject matter of the statement.

**History: En. Sec. 12, Ch. 3, L. 1923; re-en. Sec. 2122.12, R.C.M. 1935; amd. Sec. 57, Ch. 405, L. 1973; R.C.M. 1947, 84-712; amd. Sec. 67, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 before "of the county" substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-8-710. Property tax record prima facie evidence.** The property tax record or delinquent list or a copy of either certified by the county treasurer showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of the taxes have been complied with.

**History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. 1907; re-en. Sec. 2216, R.C.M. 1921; Cal. Pol. C. Sec. 3789; re-en. Sec. 2216, R.C.M. 1935; R.C.M. 1947, 84-4171; amd. Sec. 3, Ch. 17, L. 1985; amd. Sec. 68, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near beginning substituted "property tax record" for "assessment book" and after "certified by" substituted "county treasurer" for "county clerk and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-9-101. Department to equalize valuations — hearing.** (1) The department shall adjust and equalize the valuation of taxable property among the several counties, between the different classes of taxable property in any county and in the several counties, and between individual taxpayers and shall do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers.

(2) The department may hold a public hearing to determine the value of any class of property in any county and may raise or lower the value of any class of property on the basis of testimony at the hearing.

(3) At the hearing, the department may subpoena witnesses and hear and take evidence as in its discretion it considers proper.

**History: (1)En. 84-708.1 by Sec. 53, Ch. 405, L. 1973; amd. Sec. 1, Ch. 134, L. 1975; amd. Sec. 1, Ch. 381, L. 1975; amd. Sec. 1, Ch. 465, L. 1975; amd. Sec. 9, Ch. 98, L. 1977; amd. Sec. 53, Ch. 566, L. 1977; Sec. 84-708.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 187, L. 1933; re-en. Sec. 2116.1, R.C.M. 1935; amd. Sec. 40, Ch. 405, L. 1973; Sec. 84-605, R.C.M. 1947; (3)Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R.C.M. 1921; Cal. Pol. C. Sec. 3676; re-en. Sec. 2117, R.C.M. 1935; amd. Sec. 6, Ch. 516, L. 1973; Sec. 84-606, R.C.M. 1947; R.C.M. 1947, 84-605, 84-606, 84-708.1(3); amd. Sec. 69, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "taxpayers", deleted "supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents"; in (3), near beginning after "hearing", deleted "of the application" and after "evidence" deleted "in relation to the subject pending"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-9-102. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R.C.M. 1921; Cal. Pol. C. Sec. 3677; re-en. Sec. 2118, R.C.M. 1935; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973; R.C.M. 1947, 84-607.**

**15-9-103. Department to use records in equalizing.** The department shall use the abstract and all other information it may gain from the records of the county clerk and recorder or elsewhere in equalizing the assessment of the property of each county and shall enter in the property tax record any property that has not been assessed.

**History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R.C.M. 1921; Cal. Pol. C. Sec. 3679; re-en. Sec. 2119, R.C.M. 1935; amd. Sec. 42, Ch. 405, L. 1973; R.C.M. 1947, 84-608; amd. Sec. 70, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "clerk" inserted "and recorder", after "county and" substituted "shall enter in the property tax record" for "may require entry upon the assessment book of", and deleted second sentence that read: "Any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-10-202. Certification of taxable values and millage rates.** By the second Monday in July, the department shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record. Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record.

**History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202; amd. Sec. 4, Ch. 726, L. 1985; amd. Sec. 5, Ch. 26, Sp. L. June 1986; amd. Sec. 2, Ch. 9, L. 1989; amd. Sec. 71, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at beginning substituted "By the second Monday in July" for "At the time that the assessment roll is prepared and published", in four places, after "department", deleted "or its agent", and in four places substituted references to property tax record for references to assessment roll; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.** (1) A local taxing authority may not budget an increased amount of ad valorem tax revenue in excess of the property tax revenue it received the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the property tax record unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except that the newspaper may not be primarily in the business of publishing legal advertisements. If there is no newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of 7-1-4128. The advertisement must be published with at least the following information:

NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information).

**History: En. 84-7203 by Sec. 3, Ch. 286, L. 1974; R.C.M. 1947, 84-7203; amd. Sec. 6, Ch. 581, L. 1979; amd. Sec. 39, Ch. 370, L. 1987; amd. Sec. 1, Ch. 817, L. 1991; amd. Sec. 72, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near end of first sentence, after "first time on the", substituted "property tax record" for "assessment roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-10-205. Approval and copies of resolution or ordinance.** The resolution or ordinance approved in the manner provided for in this part must be forwarded to the county treasurer and the department. Millage in excess of the department's certified millage may not be levied until the resolution or ordinance to levy required in 15-10-204 is approved by the governing board of the taxing authority and submitted to the department.

**History: En. 84-7205 by Sec. 5, Ch. 286, L. 1974; R.C.M. 1947, 84-7205; amd. Sec. 73, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence deleted "assessor"; in second sentence, before "15-10-204", deleted "subsections (1) and (2) of" and at end, before "department", deleted "assessor and the"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-10-206. Exceptions for decisions of tax appeal boards.** The department shall notify each taxing authority of any change in the property tax record that results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above the millage certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority that is required solely by a reduction of the property tax record by the state or county tax appeal board may be adopted without further notice.

**History: En. 84-7206 by Sec. 6, Ch. 286, L. 1974; R.C.M. 1947, 84-7206; amd. Sec. 3, Ch. 9, L. 1989; amd. Sec. 74, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in two places, after "department", deleted "or its agent" and in two places substituted "property tax record" for "assessment roll"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-10-301 through 15-10-304. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**Compiler's Comments**

*Histories of Repealed Sections:*

**15-10-301.** En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R.C.M. 1921; Cal. Pol. C. Sec. 3727; re-en. Sec. 2156, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973; R.C.M. 1947, 84-4001.

**15-10-302.** En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R.C.M. 1921; Cal. Pol. C. Sec. 3728; re-en. Sec. 2157, R.C.M. 1935; amd. Sec. 77, Ch. 405, L. 1973; amd. Sec. 7, Ch. 126, L. 1977; R.C.M. 1947, 84-4002.

**15-10-303.** En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R.C.M. 1921; Cal. Pol. C. Sec. 3729; re-en. Sec. 2158, R.C.M. 1935; amd. Sec. 149, Ch. 516, L. 1973; R.C.M. 1947, 84-4003.

**15-10-304.** En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R.C.M. 1921; Cal. Pol. C. Sec. 3730; re-en. Sec. 2159, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973; R.C.M. 1947, 84-4004; amd. Sec. 2, Ch. 357, L. 1985.

**15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes.** (1) The county clerk and recorder shall by the third Monday in August notify the department of the number of mills needed to be levied for each taxing jurisdiction in the county. The department shall compute the taxes by multiplying the number of mills times the taxable value of the property to be taxed and shall add any fees or assessments required to be levied against a person owning property. All taxes, fees, and assessments must be itemized for the property listed in the property tax record.

(2) The department shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property and shall notify the county clerk and recorder and the county treasurer by the second Monday in October.

**History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R.C.M. 1921; Cal. Pol. C. Sec. 3731; re-en. Sec. 2160, R.C.M. 1935; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973; R.C.M. 1947, 84-4005; amd. Sec. 75, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted present text concerning notification of mill levy for each taxing jurisdiction, computation of taxes, and notification of taxes, fees, and assessments to be levied for former text that read: "The department of revenue or its agent must then compute and enter in a separate money column in the assessment book the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated and foot up the columns showing the total amount of such taxes and the columns of total value of property in the county and shall attach thereto his affidavit, by him subscribed as follows and shall on or before the second Monday of October deliver the completed assessment book to the county clerk and recorder:

"I, ...., an agent of the department of revenue, do swear that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes, and acreage as required by law, and the assessment book to which this affidavit is affixed is full, true, and correct and made in the manner prescribed by law."" Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-10-306. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: (1)En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R.C.M. 1921; Cal. Pol. C. Sec. 3732; amd. Sec. 9, Ch. 96, L. 1923; re-en. Sec. 2161, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973; Sec. 84-4006, R.C.M. 1947; (2)En. Sec. 93, p. 107, L. 1891; re-en. Sec. 3848, Pol. C. 1895; re-en. Sec. 2612, Rev. C. 1907; re-en. Sec. 2164, R.C.M. 1921; Cal. Pol. C. Sec. 3735; re-en. Sec. 2164, R.C.M. 1935; Sec. 84-4008, R.C.M. 1947; R.C.M. 1947, 84-4006, 84-4008.**

**15-10-307. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 92, p. 107, L. 1891; re-en. Sec. 3847, Pol. C. 1895; re-en. Sec. 2611, Rev. C. 1907; re-en. Sec. 2163, R.C.M. 1921; Cal. Pol. C. Sec. 3734; amd. Sec. 10, Ch. 96, L. 1923; re-en. Sec. 2163, R.C.M. 1935; amd. Sec. 4, Ch. 167, L. 1943; R.C.M. 1947, 84-4007.**

**15-10-308. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History:** **En. Sec. 94, p. 107, L. 1891; re-en. Sec. 3849, Pol. C. 1895; re-en. Sec. 2613, Rev. C. 1907; re-en. Sec. 2165, R.C.M. 1921; Cal. Pol. C. Sec. 3736; amd. Sec. 11, Ch. 96, L. 1923; re-en. Sec. 2165, R.C.M. 1935; R.C.M. 1947, 84-4009.**

**15-15-101. County tax appeal board — meetings and compensation.** (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve. The members receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. It shall continue in session from time to time to hear protests concerning assessments made by the department until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department:

(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.

(3) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406.

**History:** **Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R.C.M. 1921; Cal. Pol. C. Sec. 3672; re-en. Sec. 2113, R.C.M. 1935; amd. Sec. 36, Ch. 405, L. 1973; amd. Sec. 1, Ch. 38, L. 1974; amd. Sec. 1, Ch. 285, L. 1975; amd. Sec. 1, Ch. 355, L. 1977; amd. Sec. 25, Ch. 453, L. 1977; R.C.M. 1947, 84-601; amd. Sec. 1, Ch. 630, L. 1979; amd. Sec. 2, Ch. 502, L. 1981; amd. Sec. 5, Ch. 526, L. 1981; amd. Sec. 1, Ch. 216, L. 1983; amd. Sec. 13, Ch. 526, L. 1983; amd. Sec. 1, Ch. 242, L. 1991; amd. Sec. 9, Ch. 594, L. 1993; amd. Sec. 76, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at end of introductory clause, deleted "or its agent"; in (3), near beginning of second sentence after "clerk", inserted "and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 594 at end of (4) substituted "15-1-406" for "15-2-307 through 15-2-310"; and made minor changes in style.

**15-15-102. Application for reduction in valuation.** The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. The application must be filed on or before the first Monday in June or 15 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later. If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made.

**History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R.C.M. 1921; Cal. Pol. C. Sec. 3674; amd. Sec. 2, Ch. 187, L. 1933; re-en. Sec. 2115, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973; amd. Sec. 1, Ch. 360, L. 1975; amd. Sec. 3, Ch. 155, L. 1977; amd. Sec. 3, Ch. 355, L. 1977; R.C.M. 1947, 84-603; amd. Sec. 2, Ch. 630, L. 1979; amd. Sec. 4, Ch. 9, L. 1989; amd. Sec. 3, Ch. 227, L. 1993; amd. Sec. 77, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in second sentence, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 227 in second sentence, after "appraisal", inserted "or determination after review under 15-7-102(3)" and inserted third sentence requiring review in the next tax year if the Department's determination after review is not made in time to allow county tax appeal board review during the current tax year; and made minor changes in style. Amendment effective March 30, 1993.

*Effective Date — Retroactive Applicability:* Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

**15-15-103. Examination of applicant — failure to hear application.** (1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application, touching the value of the property of each person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be taken in shorthand, taken by stenotype, or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session.

**History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R.C.M. 1921; Cal. Pol. C. Sec. 3675; amd. Sec. 3, Ch. 187, L. 1933; re-en. Sec. 2116, R.C.M. 1935; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973; amd. Sec. 2, Ch. 38, L. 1974; amd. Sec. 4, Ch. 355, L. 1977; R.C.M. 1947, 84-604; amd. Sec. 3, Ch. 630, L. 1979; (2)En. Sec. 4, Ch. 630, L. 1979; amd. Sec. 3, Ch. 471, L. 1987; amd. Sec. 4, Ch. 227, L. 1993; amd. Sec. 2, Ch. 15, Sp. L. November 1993; amd. Sec. 78, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendments:* Chapter 15 in (1), at end of second sentence after "attends", substituted "the county tax appeal board hearing" for "and answers all questions pertinent to the inquiry" and inserted third, fourth, and fifth sentences that read: "An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing"; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 27 in (1), in second sentence after "unless", substituted "the applicant" for "such person or agent"; in (2), in second sentence, substituted "department" for "county treasurer" and "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 227 in (2) inserted language concerning appeals; inserted (2)(b) concerning nonautomatic untimely appeals; and made minor changes in style. Amendment effective March 30, 1993.

*Effective Date — Retroactive Applicability:* Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

**15-15-104. Appeal to state tax appeal board.** If the appearance provisions of 15-15-103 have been complied with, a person or the department of revenue on behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

**History: Ap. p. Sec. 9, Ch. 3, L. 1923; re-en. Sec. 2122.9, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973; amd. Sec. 4, Ch. 38, L. 1974; amd. Sec. 1, Ch. 277, L. 1974; amd. Sec. 1, Ch. 155, L. 1977; amd. Sec. 1, Ch. 249, L. 1977; Sec. 84-709, R.C.M. 1947; Ap. p. by Code Commissioner, 1979; R.C.M. 1947, 84-709(part); amd. Sec. 3, Ch. 15, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 15 at beginning, before "person", substituted "If the appearance provisions of 15-15-103 have been complied with, a" for "Any"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

**15-16-101. Treasurer to publish notice — manner of publication.** (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to that time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give

notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

**History:** **Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R.C.M. 1921; Cal. Pol. C. Sec. 3746; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931; re-en. Sec. 2169, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1977; Sec. 84-4101, R.C.M. 1947; Ap. p. Sec. 3861, Pol. C. 1895; re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. 2170, R.C.M. 1921; Cal. Pol. C. Sec. 3749; re-en. Sec. 2170, R.C.M. 1935; Sec. 84-4105, R.C.M. 1947; R.C.M. 1947, 84-4101, 84-4105; amd. Sec. 1, Ch. 492, L. 1981; amd. Sec. 1, Ch. 576, L. 1981; amd. Sec. 1, Ch. 6, Sp. L. 1981; amd. Sec. 29, Ch. 587, L. 1987; amd. Sec. 79, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in introductory clause of (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-104. Entry of payment — receipt.** (1) The county treasurer shall note the date and the amount of the payment of any tax in the property tax record opposite the name of the person paying.

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

(b) If the payment is received through the mail or by any electronic means, the county treasurer shall issue a receipt only on request of the person paying the tax. If the county treasurer issues a receipt, it must contain the information specified in subsection (2)(a).

**History:** **(1)En. Sec. 3862, Pol. C. 1895; re-en. Sec. 2618, Rev. C. 1907; re-en. Sec. 2171, R.C.M. 1921; Cal. Pol. C. Sec. 3750; amd. Sec. 3, Ch. 96, L. 1923; re-en. Sec. 2171, R.C.M. 1935; Sec. 84-4106, R.C.M. 1947; (2)En. Sec. 97, p. 108, L. 1891; re-en. Sec. 3863, Pol. C. 1895; re-en. Sec. 2619, Rev. C. 1907; re-en. Sec. 2172, R.C.M. 1921; Cal. Pol. C. Sec. 3751; re-en. Sec. 2172, R.C.M. 1935; Sec. 84-4107, R.C.M. 1947; R.C.M. 1947, 84-4106, 84-4107; amd. Sec. 2, Ch. 599, L. 1987; amd. Sec. 80, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-105. When property assessed more than once.** When the county treasurer discovers that any property has been assessed more than once for the same year, the county treasurer shall collect only the tax due and report that fact to the department.

**History:** **En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907; re-en. Sec. 2223, R.C.M. 1921; Cal. Pol. C. Sec. 3805; re-en. Sec. 2223, R.C.M. 1935; R.C.M. 1947, 84-4178; amd. Sec. 81, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near beginning, before "treasurer", inserted "county" and at end substituted "report that fact to the department" for "make return of the facts under affidavit to the county clerk and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-111 through 15-16-114. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**Compiler's Comments**

*Histories of Repealed Sections:*

**15-16-111.** En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R.C.M. 1921; Cal. Pol. C. Sec. 3820; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 143, L. 1929; re-en. Sec. 2238, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973; R.C.M. 1947, 84-4201; amd. Sec. 31, Ch. 587, L. 1987.

**15-16-112.** En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R.C.M. 1921; re-en. Sec. 2251, R.C.M. 1935; amd. Sec. 84, Ch. 405, L. 1973; R.C.M. 1947, 84-4211; amd. Sec. 32, Ch. 587, L. 1987.

**15-16-113.** En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R.C.M. 1921; Cal. Pol. C. Sec. 3821; amd. Sec. 2, Ch. 102, L. 1923; re-en. Sec. 2239, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973; amd. Sec. 1, Ch. 162; amd. Sec. 1, Ch. 475, L. 1975; amd. Sec. 1, Ch. 105, L. 1977; R.C.M. 1947, 84-4202(1), (2); amd. Sec. 33, Ch. 587, L. 1987; amd. Sec. 2, Ch. 631, L. 1989.

**15-16-114.** En. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R.C.M. 1921; Cal. Pol. C. Sec. 3823; amd. Sec. 1, Ch. 122, L. 1933; re-en. Sec. 2247, R.C.M. 1935; amd. Sec. 15, Ch. 388, L. 1975; R.C.M. 1947, 84-4209(part); amd. Sec. 34, Ch. 587, L. 1987.

**15-16-115. Treasurer's record of personal property taxes paid.** (1) On or before December 1 of each year, the county treasurer shall note on the property tax record, opposite the name of each person from whom taxes have been collected, the amount of taxes received and the date of receipt.

(2) If the taxes have not been collected, the treasurer shall note in the property tax record the reason why collection was not made.

**History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2250, R.C.M. 1921; re-en. Sec. 2250, R.C.M. 1935; R.C.M. 1947, 84-4210; amd. Sec. 35, Ch. 587, L. 1987; amd. Sec. 82, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), before "treasurer", inserted "county" and near end, after "collected", deleted "by him in pursuance of the report of the assessor"; and in (1) and (2) substituted "property tax record" for "assessment book". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-117. Personal property — treasurer's duty to collect certain taxes.** (1) The county treasurer shall demand payment of poor fund taxes, authorized by 53-2-322, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) These taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

**History: (1), (2)En. Sec. 1, Ch. 168, L. 1935; re-en. Sec. 2252.1, R.C.M. 1935; Sec. 84-4213, R.C.M. 1947; (3)En. Sec. 2, Ch. 168, L. 1935; re-en. Sec. 2252.2, R.C.M. 1935; Sec. 84-4214, R.C.M. 1947; R.C.M. 1947, 84-4213, 84-4214; amd. Sec. 36, Ch. 587, L. 1987; amd.**

**Sec. 3, Ch. 631, L. 1989; amd. Sec. 4, Ch. 561, L. 1993; amd. Sec. 83, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) and (2) substituted "property tax record" for "assessment lists"; near end of (3) substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 561 near beginning of (1), after "poor", inserted "fund" and after "authorized by" substituted "53-2-322" for "53-2-321"; and made minor changes in style. Amendment effective July 1, 1993.

**15-16-119. Taxation of personal property — duty of department.** (1) If the taxes on personal property are not a lien upon real property in the same county in an amount sufficient to secure the payment of the taxes, the department shall assess the property and compute the tax for the assessment. The department shall notify the county treasurer of the assessment and the amount of taxes due. To compute the taxes due on the personal property, the department shall use the appropriate mills levied during the previous year.

(2) The county treasurer shall notify the person against whom the tax is assessed and any other person having a properly perfected security interest of record of the amount and due date of the tax. The tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

(3) The county treasurer shall, after the tax becomes delinquent, levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

(4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for sale purposes and may receive payment of the taxes, penalty, and interest. The sheriff may receive the same fees as for making a seizure and sale as provided in 15-17-911.

(5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell the personal property for the taxes levied upon the property, including penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

**History: En. Sec. 157, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that this section applies to tax years after December 31, 1993.

*Effective Date:* Section 173(1), Ch. 27, Sp. L. November 1993, provided that this section is effective January 1, 1994.

**15-16-120 reserved.**

**15-16-203. Assessment of property previously exempt.** (1) Real property or improvements exempt from taxation under Title 15, chapter 6, that during a tax year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 if the property was not exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102.

**History: En. Sec. 1, Ch. 570, L. 1991; amd. Sec. 84, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (4), after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-302. Tabulation and transmittal of real property delinquent list.** (1) The county treasurer shall, at the time specified in 15-16-301, deliver to the county clerk and recorder a complete delinquent list of all persons owing taxes and the property on which the taxes are owed.

(2) In the list, all matters and things contained in the property tax record relating to delinquent persons or property must be set down in numerical or alphabetical order.

(3) The county clerk and recorder shall carefully compare the list with the property tax record, and if satisfied that the list contains a full and true statement of all taxes due and unpaid, the county clerk and recorder shall total the amount of taxes remaining unpaid, credit the county treasurer with that amount, make a final settlement with the treasurer of all taxes charged against the treasurer on the property tax record, and require from the treasurer an immediate account for any existing deficiency.

**History: (1)En. Sec. 102, p. 109, L. 1891; re-en. Sec. 3868, Pol. C. 1895; re-en. Sec. 2624, Rev. C. 1907; re-en. Sec. 2177, R.C.M. 1921; re-en. Sec. 2177, R.C.M. 1935; Sec. 84-4112, R.C.M. 1947; (2)En. Sec. 103, p. 109, L. 1891; re-en. Sec. 3869, Pol. C. 1895; re-en. Sec. 2625, Rev. C. 1907; re-en. Sec. 2178, R.C.M. 1921; Cal. Pol. C. Sec. 3760; re-en. Sec.**

**2178, R.C.M. 1935; Sec. 84-4113, R.C.M. 1947; (3)En. Sec. 104, p. 109, L. 1891; re-en. Sec. 3870, Pol. C. 1895; re-en. Sec. 2626, Rev. C. 1907; re-en. Sec. 2179, R.C.M. 1921; Cal. Pol. C. Sec. 3761; re-en. Sec. 2179, R.C.M. 1935; Sec. 84-4114, R.C.M. 1947; R.C.M. 1947, 84-4112, 84-4113, 84-4114; amd. Sec. 38, Ch. 587, L. 1987; amd. Sec. 85, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in three places substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-305. Disposition of delinquent list.** (1) On the third Tuesday of February, the county clerk and recorder shall compare the lists with the assessments of persons and property not shown as "paid" on the property tax record. If the taxes have been paid, the county clerk and recorder shall note the fact in the appropriate section of the property tax record.

(2) The county clerk and recorder shall then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with the payment.

(3) The county clerk and recorder shall then total the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with the treasurer. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1), the treasurer shall make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that the treasurer has not been able to discover any property belonging to or in possession of the persons liable to pay the taxes to collect them.

**History: (1)En. Sec. 141, p. 116, L. 1891; re-en. Sec. 3908, Pol. C. 1895; re-en. Sec. 2664, Rev. C. 1907; re-en. Sec. 2217, R.C.M. 1921; re-en. Sec. 2217, R.C.M. 1935; Sec. 84-4172, R.C.M. 1947; (2)En. Sec. 142, p. 117, L. 1891; re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. 2665, Rev. C. 1907; re-en. Sec. 2218, R.C.M. 1921; Cal. Pol. C. Sec. 3798; re-en. Sec. 2218, R.C.M. 1935; Sec. 84-4173, R.C.M. 1947; (3)En. Sec. 143, p. 117, L. 1891; re-en. Sec. 3910, Pol. C. 1895; re-en. Sec. 2666, Rev. C. 1907; re-en. Sec. 2219, R.C.M. 1921; Cal. Pol. C. Sec. 3799; re-en. Sec. 2219, R.C.M. 1935; Sec. 84-4174, R.C.M. 1947; (4)En. Sec. 144, p. 117, L. 1891; re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. 2667, Rev. C. 1907; re-en. Sec. 2220, R.C.M. 1921; Cal. Pol. C. Sec. 3800; re-en. Sec. 2220, R.C.M. 1935; Sec. 84-4175, R.C.M. 1947; R.C.M. 1947, 84-4172, 84-4173, 84-4174, 84-4175; amd. Sec. 41, Ch. 370, L. 1987; amd. Sec. 40, Ch. 587, L. 1987; amd. Sec. 86, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), at end of first sentence, substituted "property tax record" for "assessment book" and at end of second sentence substituted "section of the property tax record" for "column in the assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.** (1) The tax due on personal property is a prior lien upon the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.

(2) The taxes on personal property based on a taxable value up to and including $10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of $10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of $10,000 are not a lien upon the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due on the taxable value up to and including $10,000. Personal property taxes on a taxable value up to $10,000 may be paid, redeemed from a tax sale as provided by law, or discharged separately from any personal property taxes in excess of that amount. Payment of the taxes on a taxable value up to $10,000, as provided in this subsection, discharge the tax lien upon the personal property of the owner to the extent of the payment in the order that the person paying the tax directs.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of the county and with the department a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount of the mortgage or lien; and

(f) a statement that the holder claims the benefit of the provisions of this section.

(4) The notice is ineffectual as to any taxes that are a lien upon real property prior to the filing of the notice as provided in subsection (3).

(5) A holder of a mortgage on real property upon which personal property taxes are a lien under this section, when the owner of the real property and personal property has failed to pay taxes due on the real property and personal property for 1 or more years, may file with the department a written request to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department of the request, the department shall make a separate assessment of real and personal property of the owner of the property, and the personal property taxes may not be a lien upon the mortgaged real property. The personal property taxes must be collected in the manner provided by law for other personal property.

(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment of filing the

certificate, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:

(a) the county treasurer if the holder has filed a notice under subsection (3); and

(b) the department if the holder has filed a written request under subsection (5).

(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

**History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R.C.M. 1921; Cal. Pol. C. Sec. 3717; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; re-en. Sec. 2153, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973; amd. Sec. 12, Ch. 388, L. 1975; R.C.M. 1947, 84-3808; amd. Sec. 42, Ch. 587, L. 1987; amd. Sec. 1, Ch. 286, L. 1989; amd. Sec. 7, Ch. 631, L. 1989; amd. Sec. 1, Ch. 611, L. 1991; amd. Sec. 87, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3), after "county", inserted "and with the department"; in (5), at beginning of first sentence, substituted "A holder" for "Any owner", in second sentence, before "certified", deleted "registered or", and in third sentence, in two places after "department", deleted "or its agent"; in (5), near middle of first sentence, and in (6)(b), after "department", deleted language concerning the Department's agent in the county in which property is located; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-504. Evidence at trial.** On trial, a certified copy of the assessment signed by the county clerk and recorder of the county where the assessment was made, with the affidavit of the county treasurer that the tax has not been paid attached to the copy, describing the assessment as on the property tax record or delinquent list, is prima facie evidence that the taxes, plus interest, penalties, and costs, are due and entitles the county to judgment unless the defendant proves that the tax was paid.

**History: En. Sec. 150, p. 118, L. 1891; re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 2674, Rev. C. 1907; re-en. Sec. 2227, R.C.M. 1921; Cal. Pol. C. Sec. 3809; re-en. Sec. 2227, R.C.M. 1935; R.C.M. 1947, 84-4182; amd. Sec. 44, Ch. 587, L. 1987; amd. Sec. 88, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near middle, before "treasurer", inserted "county" and substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property.** (1) The department shall, upon showing by a taxpayer that some or all of the improvements on the taxpayer's real property, that a trailer or mobile home, or that personal property taxed under Title 15, chapter 6, part 1, has been destroyed to such an extent that the improvements or personal property has been rendered unsuitable for its previous use by natural disaster, adjust the taxable value on the property, accounting for the destruction.

(2) The county treasurer shall adjust the tax due and payable for the current year on the property under 15-16-102 or on personal property under 15-16-119 or 15-24-202 as provided in subsection (3) of this section.

(3) To determine the amount of tax due for destroyed property, the county treasurer shall:

(a) multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property existed before destruction bears to 365; and

(b) multiply the amount of tax levied and assessed on the adjusted taxable value of the property for the remainder of the year by the ratio that the number of days remaining in the year after the destruction of the property bears to 365.

(4) This section does not apply to delinquent taxes owed on the destroyed property for a year prior to the year in which the property was destroyed.

(5) A taxpayer receiving a reduction in taxes on personal property under this section shall notify the department if the taxpayer replaces the destroyed personal property in the same tax year that the personal property was destroyed. The tax on the personal property replacing the destroyed personal property must be prorated according to the ratio that the number of days remaining in the year after the property was replaced bears to 365. A taxpayer who fails to notify the department within 30 days from the date of the replacement of the personal property is subject to the penalty prescribed in 15-1-303.

(6) For the purposes of this section, "natural disaster" includes but is not limited to fire, flood, earthquake, or wind. A fire is considered a natural disaster regardless of the origin of the fire. However, if the taxpayer is convicted of arson for burning the property, property taxes may not be adjusted. If the taxes had already been adjusted prior to the conviction, the original amount must be collected.

**History: En. Sec. 1, Ch. 541, L. 1979; amd. Sec. 1, Ch. 263, L. 1981; amd. Sec. 1, Ch. 317, L. 1985; amd. Sec. 1, Ch. 717, L. 1991; amd. Sec. 13, Ch. 773, L. 1991; amd. Sec. 89, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-17-124. Irregular assessment.** If the county treasurer discovers, prior to the tax sale, that property on which the taxes are delinquent has been irregularly assessed, the county treasurer may not offer the property or a property tax lien for sale. The taxes on the property must be listed on the property tax record as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected.

**History: En. Sec. 4, Ch. 587, L. 1987; amd. Sec. 90, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in second sentence substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-17-317. Municipality as purchaser.** Whenever property that has been struck off to the county at a tax sale under 15-17-214 is subject to the lien of delinquent special assessments and has not been assigned under 15-17-214 or 15-17-323 at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired in the property at the sale to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality, who shall file it. A charge may not be made for the duplicate certificate when the municipality is the purchaser, and the county treasurer shall make an entry "sold to the municipality" on the property tax record opposite the tax. The county treasurer must be credited with the delinquent amount in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable.

**History: En. Sec. 9, Ch. 617, L. 1987; amd. Sec. 8, Ch. 83, L. 1989; amd. Sec. 91, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at end of third sentence substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.** (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-119 and this section apply to a seizure and sale under subsection (1).

(3) A sale under subsection (1) must be at public auction.

(4) For seizing and selling personal property, the county treasurer shall charge $25, plus the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property seized. The charge and other costs may be charged only when property is actually seized and offered for sale or sold.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must

then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer.

**History: En. Sec. 15, Ch. 587, L. 1987; amd. Sec. 10, Ch. 631, L. 1989; amd. Sec. 1, Ch. 36, L. 1993; amd. Sec. 92, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) substituted "15-16-119" for "15-16-113"; in (4), before "treasurer", inserted "county"; and in (9), after "clerk", inserted "and recorder". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 36 in (3) deleted former second sentence that read: "The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs"; substituted (6)(a) concerning proceeds of sale for former subsection that read: "All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest but not costs, must be credited by the treasurer to the appropriate funds"; inserted (9) allowing cancellation of personal property taxes remaining unsatisfied after sale of personal property; and made minor changes in style.

**15-18-412. Procedure in tax deed quiet title action.** (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any kind against the state or purchaser and a decree must be entered in the action quieting the title of the purchaser as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(c) A deposit is not required if the true owner is found by the court to be indigent following an examination into the matter by the court upon the request of a true owner claiming to be indigent.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the purchaser.

(4) If the purported true owner is not successful in the action and the title of the purchaser is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a purchaser to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part of the premises may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in the action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or being paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order the department or any tax officer to make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment.

**History: En. Sec. 25, Ch. 587, L. 1987; amd. Sec. 2, Ch. 104, L. 1991; amd. Sec. 93, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (7), near middle of first sentence after "order", substituted "the department" for "any assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-104. Failure to file — estimate by department — penalty.** (1) If any person fails to file a report or return within the time established in 15-23-103 or by a later date approved by the department, the department shall estimate the value of the property that should have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or the person's agent as specified in 15-1-302. An assessment pursuant to parts 5 through 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. For each month or part of a month that a report is delinquent, the department shall impose and collect a $25 penalty, with the total not to exceed $200, and shall deposit the penalty to the credit of the general fund. The department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent. The department shall notify the county treasurer of each affected county of the amount of the penalty, and the treasurer shall collect the penalty in the same manner as the taxes to which the penalty applies.

(2) For a delinquency in reporting under 15-23-212, the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent.

**History: En. 84-7804 by Sec. 4, Ch. 98, L. 1977; R.C.M. 1947, 84-7804; amd. Sec. 2, Ch. 606, L. 1983; amd. Sec. 3, Ch. 357, L. 1985; amd. Sec. 6, Ch. 811, L. 1991; amd. Sec. 4, Ch. 10, Sp. L. July 1992; amd. Sec. 94, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in seventh sentence after "department", deleted "will also inform its agents in the counties of the delinquency, and, except as provided in subsection (2), the agents" and inserted last sentence concerning notice to and collection by County Treasurer; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-106. Report to the counties.** (1) On or before July 1, the department shall prepare for each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-515, 15-23-516, 15-23-517, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The department shall enter the reported assessed values in the property tax record for the county.

**History: En. 84-7806 by Sec. 6, Ch. 98, L. 1977; R.C.M. 1947, 84-7806; amd. Sec. 1, Ch. 238, L. 1981; amd. Sec. 6, Ch. 20, L. 1985; amd. Sec. 6, Ch. 531, L. 1989; amd. Sec. 6, Ch. 695, L. 1991; amd. Sec. 6, Ch. 506, L. 1993; amd. Sec. 95, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in introductory clause of (1) substituted "prepare for" for "transmit to its agent in"; and substituted (2) concerning entry of reported values in property tax record for former language that read: "The agent of the department shall enter the assessed values transmitted in the assessment book in a manner prescribed by the department." Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 506 in (1)(d) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

*Effective Date — Retroactive Applicability:* Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

**15-23-107. Amended assessment.** Whenever the valuation of centrally assessed property is revised under 15-8-601 or 15-23-102(2), the department shall, within 15 days following the final decision or order, enter the revision in the property tax record for each applicable county.

**History: En. 84-7807 by Sec. 7, Ch. 98, L. 1977; R.C.M. 1947, 84-7807; amd. Sec. 96, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at end substituted "enter the revision in the property tax record for each applicable county" for "transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located"; and deleted second sentence that read: "The revision shall be immediately entered in the assessment book." Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-115. Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, 15-23-517, 15-23-602, 15-23-701, or 15-23-802 and if an additional tax is due, there must be added to the tax until paid in full interest at the rate of 1% a month or fraction of a month from the date the original tax was due and payable. A taxpayer subject to imposition of interest pursuant to this section is not subject to the penalty and interest provisions contained in 15-16-102.

**History: En. Sec. 1, Ch. 112, L. 1983; amd. Sec. 7, Ch. 531, L. 1989; amd. Sec. 7, Ch. 695, L. 1991; amd. Sec. 7, Ch. 506, L. 1993; amd. Sec. 97, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "15-23-802" deleted "the department shall inform its agents at the county level of the determination"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 506 in first sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

*Effective Date — Retroactive Applicability:* Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

**15-23-507. Taxation and payment on royalty interests.** At the time of computing net proceeds assessments, the department shall also determine the royalty lists or schedules for each county in which the mines and mining claims are located. The department shall prepare from the net proceeds and royalty assessments a tax roll that must be furnished to the county treasurer on or before the following September 15. Upon furnishing the tax roll, the taxes are due and payable. Assessments of royalty on production of metals and minerals other than petroleum and natural gas must be entered by the department in the property tax record in the name of the recipient or owner of the royalty. The county treasurer shall give full notice of the assessment to the recipient or royalty owner and shall collect the taxes in the same manner as taxes on net proceeds of mines. Taxes on the royalty assessments and taxes on net proceeds of mines are payable at the times specified in 15-16-102, and any delinquencies in the payment are subject to the interest and penalties provided in 15-16-102.

**History: En. Sec. 6, Ch. 188, L. 1935; re-en. Sec. 2091.1, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973; amd. Sec. 1, Ch. 398, L. 1975; R.C.M. 1947, 84-5409; amd. Sec. 98, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, near beginning, substituted "computing" for "transmitting", after "shall also" substituted "determine" for "transmit", and after "schedules" deleted "to the county assessor"; at beginning of second sentence substituted "The department" for "Thereupon the county assessor"; at beginning of third sentence inserted "Upon furnishing the tax roll"; in fourth sentence substituted "department" for "county assessor" and "tax record" for "personal property assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-601. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation.

(2) "Enhanced recovery project" means the use of any process, other than primary recovery, for the displacement of oil from the earth and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(3) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that results in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(7) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(8) "Incremental production" means the volume of petroleum or mineral or crude oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project in excess of the production decline rate established before:

(a) the expansion of an existing enhanced recovery project;

(b) the commencement of a new enhanced recovery project. In the case of a project that had no taxable production prior to the commencement of an enhanced recovery project, incremental production means all production of petroleum or mineral or crude oil from the enhanced recovery project.

(c) the commencement of the recompletion of a well as a horizontally completed well.

(9) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(10) "New production" means the production of natural gas, petroleum, or other crude or mineral oil from any well that was drilled after June 30, 1985, or that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production.

(11) "Operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(12) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(13) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area before the commencement of a new enhanced recovery project, of a recompletion of a well as a horizontally completed well, or of an expanded enhanced recovery project. The approved production decline rate must be certified in writing to the department of revenue by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used by the department to determine the volume of incremental production that qualifies for the tax rate imposed under 15-23-607(2)(c).

(14) "Production from horizontally completed wells" means petroleum or other crude or mineral oil produced from a horizontally completed well that is drilled or recompleted after December 31, 1993, and before January 1, 2002.

(15) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project. A secondary recovery project must be approved by the board as provided in 15-36-101(1)(c).

(16) "Tertiary recovery project" means an enhanced recovery project that meets each of the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

(17) "Well" means each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer.

**History: En. Sec. 1, Ch. 135, L. 1955; amd. Sec. 21, Ch. 52, L. 1977; amd. Sec. 18, Ch. 98, L. 1977; R.C.M. 1947, 84-6201; amd. Sec. 1, Ch. 525, L. 1981; amd. Sec. 1, Ch. 695, L. 1985; amd. Sec. 10, Ch. 655, L. 1987; amd. Sec. 1, Ch. 267, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 inserted definitions of Board, enhanced recovery project, existing enhanced recovery project, expanded enhanced recovery project or expansion, horizontal drain hole, horizontally completed well, incremental production, new enhanced recovery project, primary recovery, production decline rate, production from horizontally completed wells, secondary recovery project, and tertiary recovery project; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**15-23-602. Statement of sales proceeds on new production, production from horizontally completed wells, or incremental production.** (1) As provided in subsection (2), each operator or producer of new production, production from horizontally completed wells, or incremental production of petroleum or other crude or mineral oil and each operator or producer of new production of natural gas shall complete and deliver to the department of revenue a statement of the gross sales proceeds of new production of natural gas, petroleum, or other crude or mineral oil, production from horizontally completed wells, and the incremental production of petroleum or other crude or mineral oil from each well owned or worked by the person. The gross sales proceeds must be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. The statement must be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership. The statement must show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale of the production, and the amount paid or yielded as royalty to each of those persons during the period covered by the statement;

(b) the description and location of the well;

(c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement; and

(d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold.

(2) Each operator having new production, production from horizontally completed wells, or incremental production as those terms are defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, complete and deliver to the department of revenue a statement of the gross sales proceeds of the new production, production from horizontally completed wells, or incremental production from each well owned or worked by the person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement must show the information required in subsections (1)(a) through (1)(d).

**History: En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973; amd. Sec. 19, Ch. 98, L. 1977; R.C.M. 1947, 84-6202; amd. Sec. 1, Ch. 425, L. 1981; amd. Sec. 2, Ch. 525, L. 1981; amd. Sec. 3, Ch. 606, L. 1983; amd. Sec. 2, Ch. 695, L. 1985; amd. Sec. 11, Ch. 655, L. 1987; amd. Sec. 73, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 267, L. 1991; amd. Sec. 3, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 in two places in first sentence of (1) and in two places in first sentence of (2) inserted reference to production from horizontally completed wells or incremental production; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**15-23-603. Net proceeds — how computed.** (1) As provided in subsection (2), the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from the well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds are determined by subtracting from the gross sales proceeds of the well all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid.

(2) For new production, for production from horizontally completed wells, or for incremental production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from the well for the quarter covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there must be deducted so much of the product as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline.

(3) In the statement of sales proceeds required under 15-23-602 for lease or unitized areas from which new production, production from horizontally completed wells, or incremental production and other production have been sold, the number of barrels of new production, production from horizontally completed wells, or incremental production of oil or cubic feet of new production of gas must be segregated from and stated separately from the number of barrels of other production of oil or cubic feet of other production of gas.

**History: En. Sec. 3, Ch. 135, L. 1955; amd. Sec. 230, Ch. 516, L. 1973; amd. Sec. 20, Ch. 98, L. 1977; R.C.M. 1947, 84-6203; amd. Sec. 2, Ch. 425, L. 1981; amd. Sec. 3, Ch. 525, L. 1981; amd. Sec. 3, Ch. 383, L. 1983; amd. Sec. 1, Ch. 642, L. 1985; amd. Sec. 3, Ch. 695, L. 1985; amd. Sec. 2, Ch. 724, L. 1985; amd. Sec. 12, Ch. 655, L. 1987; amd. Sec. 74, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 267, L. 1991; amd. Sec. 8, Ch. 597, L. 1991; amd. Sec. 4, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near beginning of (2) and in two places in (3) inserted reference to production from horizontally completed wells or incremental production. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**15-23-607. Department to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the department shall, subject to the provisions of 15-23-612, compute the taxes on net proceeds, as provided in subsections (2) and (3) of this section, and royalty assessments and shall transmit the computed taxes to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice of the assessments to the operator and shall collect the taxes as provided by law.

(2) For new production, production from horizontally completed wells, and incremental production, as those terms are defined in 15-23-601, the department may not levy or assess any mills against the value of the new production, production from horizontally completed wells, or incremental production, but shall instead levy a tax as follows:

(a) for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(2);

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(2); or

(c) (i) except as provided in subsection (4), for incremental production that is classified as secondary recovery from new enhanced recovery projects, as defined in 15-23-601, and for incremental production that is classified as secondary recovery from expanded enhanced recovery projects, as defined in 15-23-601, 5% of net proceeds, as described in 15-23-603(2); or

(ii) for incremental production that is classified as tertiary recovery from new enhanced recovery projects, as defined in 15-23-601, and for incremental production that is classified as tertiary recovery from expanded enhanced recovery projects, as defined in 15-23-601, 3.3% of net proceeds, as described in 15-23-603(2).

(3) For purposes of this section:

(a) incremental production from a new enhanced recovery project qualifies for the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if, before the project begins development, the board approves the project and designates the area to be affected by the project.

(b) the incremental production from an expanded enhanced recovery project qualifies for the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if, before the expansion begins, the board approves the expansion and designates the area to be affected by the expansion.

(4) (a) Incremental production from a new enhanced recovery project is subject to the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a new enhanced recovery project is taxed as provided in subsection (2)(a) for production occurring in that quarter.

(b) Incremental production from an expanded enhanced recovery project is subject to the tax rate imposed in subsection (2)(c)(i) or (2)(c)(ii) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from an expanded enhanced recovery project is taxed as provided in subsection (2)(a) for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) The amount of tax levied in subsections (2)(a), (2)(b), and (2)(c), divided by the appropriate tax rate and multiplied by 60%, must be treated as taxable value for county bonding purposes.

(7) The operator or producer is liable for the payment of the taxes that, except as provided in 15-16-121, are payable by and must be collected from

the operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. However, the operator may withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by the operator upon the royalty or royalty interest. After the withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

**History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963; amd. Sec. 235, Ch. 516, L. 1973; amd. Sec. 6, Ch. 256, L. 1977; R.C.M. 1947, 84-6208; amd. Sec. 5, Ch. 695, L. 1985; amd. Sec. 15, Ch. 655, L. 1987; amd. Sec. 76, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 267, L. 1991; amd. Sec. 2, Ch. 711, L. 1991; amd. Sec. 4, Ch. 790, L. 1991; amd. Sec. 5, Ch. 9, Sp. L. November 1993; amd. Sec. 99, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendments:* Chapter 9 in (1) inserted reference to subsection (3); in two places in introductory clause of (2) inserted reference to production from horizontally completed wells or incremental production; inserted (2)(c)(i) regarding the tax on secondary recovery; inserted (2)(c)(ii) regarding the tax on tertiary recovery; inserted (3), (4), and (5) regarding calculation of tax rates on incremental production; in (6) inserted reference to subsection (2)(c); and made minor changes in style. Amendment effective December 17, 1993.

Chapter 27 in (1) and (2) substituted "department" for "county assessor"; in (1), near end, substituted "transmit the computed taxes" for "deliver the book"; and made minor changes in style. Amendment effective January 1, 1994.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-612. Certain natural gas, petroleum, or other crude or mineral oil exempt.** (1) New production, as defined in 15-23-601, is exempt from the net proceeds tax imposed by this part for the first 12 months following the last day of the calendar month immediately preceding the month in which:

(a) natural gas is placed into a natural gas distribution system; or

(b) production for sale from a crude oil or mineral oil well is pumped or flows.

(2) After the expiration of the 12-month exemption period provided for in subsection (1), new production of natural gas, petroleum, or other crude or mineral oil is subject to net proceeds tax imposed by this part.

(3) Production from horizontally completed wells, as defined in 15-23-601, and incremental production from wells recompleted as horizontally completed wells are exempt from the net proceeds tax imposed by this part for the first 18 months following the last day of the calendar month immediately preceding the month in which production for sale from a crude oil or mineral oil well is pumped or flows.

(4) After the expiration of the 18-month exemption period provided for in subsection (3), production from horizontally completed wells, as defined in 15-23-601, is subject to net proceeds taxes imposed by this part.

(5) Notwithstanding the provisions of subsections (1) through (4), all reporting requirements under the net proceeds tax remain in effect.

**History: En. 84-2213 by Sec. 2, Ch. 256, L. 1977; R.C.M. 1947, 84-2213(part); amd. Sec. 16, Ch. 655, L. 1987; amd. Sec. 6, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 inserted (3) exempting certain horizontally completed well production from the net proceeds tax for the first 18 months following the last day of the calendar month immediately preceding the month in which production for sale from a crude oil or mineral oil well is pumped or flows; inserted (4) subjecting that production to the net proceeds tax following the 18-month period; in (5) extended reference to subsections (3) and (4); and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**15-23-613. Disposition of taxes on new production, production from horizontally completed wells, and incremental production.** The county treasurer shall credit all taxes on new production, production from horizontally completed wells, and incremental production, as provided for in 15-23-607, in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes were distributed in the year preceding the budget year.

**History: En. Sec. 11, Ch. 695, L. 1985; amd. Sec. 17, Ch. 655, L. 1987; amd. Sec. 5, Ch. 267, L. 1991; amd. Sec. 7, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 near beginning, after "new production", inserted "production from horizontally completed wells, and incremental production". Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**15-23-614. Rules.** The department of revenue shall adopt rules to ensure that incremental production of oil from enhanced recovery projects is allocated to production that is subject to net proceeds taxation and to production that is subject to the local government severance tax.

**History: En. Sec. 8, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**15-23-702. Entry of gross proceeds in property tax record.** On or before July 1 each year, the department shall enter the valuation of the gross proceeds of coal mines in the property tax record for each county in which the mines are located.

**History: En. 84-1321 by Sec. 10, Ch. 525, L. 1975; R.C.M. 1947, 84-1321; amd. Sec. 100, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted present text concerning entry of valuation of gross proceeds of coal mines in property tax record for former text that read: "On or before July 1 each year, the department shall transmit to the county assessor of each county in which coal mines are situated the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department." Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

**History: En. 84-1322 by Sec. 11, Ch. 525, L. 1975; R.C.M. 1947, 84-1322; amd. Sec. 77, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 610, L. 1991; amd. Sec. 2, Ch. 641, L. 1991; amd.**

**Sec. 3, Ch. 711, L. 1991; amd. Sec. 5, Ch. 790, L. 1991; amd. Sec. 101, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in two places, substituted "department" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-704. Lien of tax — enforcement of payment.** The tax on gross proceeds from coal must be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under 15-16-119 and 15-17-911.

**History: En. 84-1323 by Sec. 12, Ch. 525, L. 1975; R.C.M. 1947, 84-1323; amd. Sec. 50, Ch. 587, L. 1987; amd. Sec. 102, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near end substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-803. Valuation — gross proceeds.** On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall record the merchantable value in the property tax record after subtracting the portion of the proceeds exempt from property taxation.

**History: En. 84-7903 by Sec. 9, Ch. 498, L. 1977; R.C.M. 1947, 84-7903; amd. Sec. 103, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted second sentence concerning recording of merchantable value in property tax record for former sentence that read: "The department shall transmit to its agent in each county where metals are produced the merchantable value as has been determined by the department for placement on the assessment roll after subtracting such portion of the proceeds as may be exempt from property taxation." Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-23-804. Taxation of merchantable value.** The department shall prepare from the reported valuation a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice to each metal producer and to collect the taxes due at the times provided for in 15-16-102, and any delinquencies in the payment of the taxes are subject to the interest and penalties provided for in 15-16-102.

**History: En. 84-7904 by Sec. 10, Ch. 498, L. 1977; R.C.M. 1947, 84-7904; amd. Sec. 104, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near beginning substituted "department" for "department's agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-104. Situs in state of proportionally registered fleets — collection of taxes and fees.** (1) For the purposes of this part, any vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes or license fees, or both, prescribed in this part.

**History: En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973; R.C.M. 1947, 84-730; amd. Sec. 14, Ch. 581, L. 1979; amd. Sec. 17, Ch. 614, L. 1981; amd. Sec. 105, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "61-3-733", substituted "has" for "is hereby declared to have"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-302. Collection procedure.** All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, 15-16-115, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.

**History: En. Sec. 3, Ch. 41, L. 1953; amd. Sec. 7, Ch. 260, L. 1977; R.C.M. 1947, 84-6010; amd. Sec. 18, Ch. 581, L. 1979; amd. Sec. 9, Ch. 663, L. 1979; amd. Sec. 2, Ch. 159, L. 1981; amd. Sec. 2, Ch. 598, L. 1981; amd. Sec. 51, Ch. 587, L. 1987; amd. Sec. 106, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in introductory clause substituted reference to 15-16-119 for reference to 15-16-111 through 15-16-114; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-801. Savings and loan associations — taxation.** Every savings and loan association subject to regulation under Title 32, chapter 2, must be assessed for and pay taxes upon all real and personal property owned by the association. The secretary of an association shall furnish to the department, within 5 days after demand, a condensed statement, verified by oath, of the resources and liabilities of the association as disclosed by its books at noon on January 1 in each year. If the secretary fails to make the statement, the department shall immediately obtain the information from any other available source, and for this purpose it shall have access to the books of the association. The department shall make an assessment of the real estate and personal property owned by the association in a manner that is as fair and equitable as it may be able to make from the best information available, or the department may, for the purpose of the assessment, adopt the figures disclosed by any prior report made by the association to any state or federal officer under a state or federal law. A person required by this section to make the statement provided for in this section who fails to furnish it is guilty of a misdemeanor.

**History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; re-en. Sec. 6355.21, R.C.M. 1935; amd. Sec. 2, Ch. 391, L. 1973; amd. Sec. 1, Ch. 388, L. 1975; Sec. 7-122, R.C.M. 1947; amd. and redes. 84-7001 by Sec. 76, Ch. 431, L. 1975; R.C.M. 1947, 84-7601; amd. Sec. 13, Ch. 634, L. 1979; amd. Sec. 107, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in second sentence, after "department", deleted "of revenue or its agent in the county in which the principal office of the association is located"; in third and fourth sentences, after "department", deleted "or its agent"; in fourth sentence substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-901. Definition.** As used in this part, "livestock" includes those animals defined as livestock in 15-1-101.

**History: En. 84-5201.3 by Sec. 1, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.3; amd. Sec. 4, Ch. 570, L. 1985; amd. Sec. 45, Ch. 370, L. 1987; amd. Sec. 108, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at end substituted "defined as livestock in 15-1-101" for "specified in 15-1-101(1)(i)". Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

**15-24-902. Assessment of livestock.** The department shall assess all nonexempt livestock in each county where they are located on February 1 of each year. The livestock must be assessed to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year.

**History: En. Sec. 3720, Pol. C. 1895; re-en. Sec. 2530, Rev. C. 1907; re-en. Sec. 2068, R.C.M. 1921; re-en. Sec. 2068, R.C.M. 1935; R.C.M. 1947, 84-5201; amd. Sec. 8, Ch. 598, L. 1989; amd. Sec. 109, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "department" deleted "or its agent" and in two places substituted "February 1" for "March 1"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

**15-24-903. Duty of owner to assist in assessment.** (1) The owner of livestock, as defined in 15-24-901, or the owner's agent, shall at the time of assessment make and deliver to the department for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date.

**History: En. 84-5201.1 by Sec. 4, Ch. 507, L. 1975; amd. Sec. 6, Ch. 260, L. 1977; R.C.M. 1947, 84-5201.1; amd. Sec. 2, Ch. 663, L. 1979; amd. Sec. 9, Ch. 598, L. 1989; amd. Sec. 110, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), after "department", deleted "or its agent" and substituted "February 1" for "March 1"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amend-

ments to this section apply to tax years after December 31, 1994.

**15-24-904. Penalty for violation of law.** If any person, persons, company, or corporation who is the owner or is in charge of any livestock within this state fails to make the statement or statements as provided in 15-24-903, the department may, after 10 days' notice to the person who failed to file the report, increase the assessment by 10% as a penalty.

**History: En. Sec. 7, Ch. 125, L. 1909; re-en. Sec. 2075, R.C.M. 1921; re-en. Sec. 2075, R.C.M. 1935; amd. Sec. 5, Ch. 507, L. 1975; R.C.M. 1947, 84-5208; amd. Sec. 3, Ch. 663, L. 1979; amd. Sec. 111, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 substituted "department" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-905. Livestock brought into state — notice to department.** The owner or the agent, manager, or supervisor of any person, corporation, or association bringing livestock into this state after February 1 shall immediately after the livestock cross the state line forward to the department a certified letter, containing the name of the owner of the livestock, the number of livestock, the brand on the livestock, the ages of the livestock, the time and place at which the livestock were brought across the state line, and the county or counties into which the livestock are moved. The department of livestock shall at least once each month furnish from its own records to the department a list of the number and kind of livestock moved into each county, together with the name of the owner of the livestock.

**History: En. Sec. 5, Ch. 41, L. 1953; amd. Sec. 114, Ch. 405, L. 1973; amd. Sec. 20, Ch. 388, L. 1975; R.C.M. 1947, 84-6012; amd. Sec. 7, Ch. 663, L. 1979; amd. Sec. 10, Ch. 598, L. 1989; amd. Sec. 112, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, near beginning, substituted "supervisor" for "foreman", substituted "February 1" for "March 1", after "department" deleted "of revenue or its agent in the county into which the livestock are moved", before "certified" deleted "or registered", and at end inserted "and the county or counties into which the livestock are moved"; in second sentence, after "department", deleted "of revenue or its agent in the county into which such livestock are moved" and after "moved" inserted "into each county"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

**15-24-906. Collection of tax on livestock.** The department, upon receipt of the letter provided for in 15-24-905 or other information that livestock has been brought into a county from outside of the state after February 1 in any year, shall immediately proceed under the provisions of this part.

**History: En. Sec. 6, Ch. 41, L. 1953; amd. Sec. 115, Ch. 405, L. 1973; amd. Sec. 21, Ch. 388, L. 1975; amd. Sec. 9, Ch. 260, L. 1977; R.C.M. 1947, 84-6013; amd. Sec. 113, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near beginning, after "department", deleted "or its agent", after "letter" inserted "provided for in 15-24-905", and substituted "February 1" for "January 1"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amend-

ments to this section apply to tax years after December 31, 1994.

**15-24-920. Election for proration of tax on livestock — refunds — additional assessment.** (1) An owner of livestock who moves the livestock interstate may elect to have the nonexempt livestock taxed on a prorated basis.

(2) The owner shall file an election with the department on the statement required in 15-24-903. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of 15-16-603 through 15-16-605, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement showing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state.

**History: En. Sec. 1, Ch. 627, L. 1991; amd. Sec. 7, Ch. 539, L. 1993; amd. Sec. 114, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) substituted "department" for "county assessor"; deleted first clause of former (2)(b) that read: "(b) if the livestock have taxable situs in the state before March 1, on a form prescribed by the department"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

*1993 Amendment:* Chapter 539 in (4), near beginning, substituted "15-16-603 through 15-16-605" for "15-16-601"; and made minor changes in style.

**15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for those purposes, a per capita tax is authorized and directed to be levied by the department on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, and domestic ungulates.

**History: En. Sec. 1, Ch. 127, L. 1915; re-en. Sec. 2076, R.C.M. 1921; re-en. Sec. 2076, R.C.M. 1935; R.C.M. 1947, 84-5209; amd. Sec. 3, Ch. 660, L. 1987; amd. Sec. 2, Ch. 627, L. 1991; amd. Sec. 2, Ch. 417, L. 1993; amd. Sec. 115, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1) substituted "department" for "county assessor" and at end substituted "provided in 81-7-104" for "hereinafter specified"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 417 in (2) inserted "alpacas"; and made minor changes in style.

**15-24-1402. New or expanding industry — assessment — notification.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the

governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

**History: En. Sec. 3, Ch. 564, L. 1981; amd. Sec. 2, Ch. 574, L. 1987; amd. Sec. 3, Ch. 694, L. 1991; amd. Sec. 48, Ch. 767, L. 1991; amd. Sec. 116, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3), near beginning after "apply to the", deleted "county assessor on a form provided by the" and near end substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.** (1) Subject to the authority contained in subsection (4), remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 1/2% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages must be applied as provided in subsections (3) and (4) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

| | |
|---|---:|
| Construction period | 0% |
| First year following construction | 20% |
| Second year following construction | 40% |
| Third year following construction | 60% |
| Fourth year following construction | 80% |
| Fifth year following construction | 100% |
| Following years | 100% |

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town must approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that

apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

**History: En. Sec. 2, Ch. 599, L. 1981; amd. Sec. 1, Ch. 439, L. 1985; amd. Sec. 1, Ch. 695, L. 1989; amd. Sec. 117, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence of (1), after "department", deleted "or its agents"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-1802. Business incubator tax exemption — procedure.** (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

**History: En. Sec. 2, Ch. 666, L. 1989; amd. Sec. 1, Ch. 669, L. 1991; amd. Sec. 118, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-1902. Industrial park tax exemption — procedure — termination.** (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

**History: En. Sec. 2, Ch. 679, L. 1989; amd. Sec. 1, Ch. 702, L. 1991; amd. Sec. 119, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-24-2002. Building and land tax exemption — procedure — termination.** (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

**History: En. Sec. 2, Ch. 693, L. 1991; amd. Sec. 4, Ch. 693, L. 1991; amd. Sec. 120, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

## Part 23
## Clean Coal Technology Projects (Repealed. Sec. 2, Ch. 33, Sp. L. November 1993)

**Part Compiler's Comments**

*Histories of Repealed Sections:*

**15-24-2301.** En. Sec. 1, Ch. 722, L. 1991.

**15-24-2302.** En. Sec. 2, Ch. 722, L. 1991; amd. Sec. 121, Ch. 27, Sp. L. November 1993.

**15-30-228. Repealed.** Sec. 169, Ch. 27, Sp. L. November 1993.

**History: En. Sec. 11, Ch. 208, L. 1959; amd. Sec. 100, Ch. 405, L. 1973; R.C.M. 1947, 84-4903.11.**

**15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for deposit in the general fund of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b) through (1)(f), a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (8)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (8)(a)(ii), of all natural gas produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) except as provided in subsection (4)(a), a 3% state severance tax on the gross taxable value of the incremental production of petroleum and other mineral or crude oil produced from a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. For purposes of this section, a secondary recovery project must meet each of the following requirements:

(i) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of petroleum or mineral or crude oil that may potentially be recovered. For purposes of this section, secondary recovery methods include but are not limited to:

(A) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of petroleum or mineral or crude oil from the producing formation to a producing well bore; or

(B) any other method approved by the board as a secondary recovery method.

(d) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet each of the following requirements:

(i) The project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(iii) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;
(B) steam drive injection;
(C) micellar/emulsion flooding;
(D) in situ combustion;
(E) polymer augmented water flooding;
(F) cyclic steam injection;
(G) alkaline or caustic flooding;
(H) carbon dioxide water flooding;
(I) immiscible carbon dioxide displacement; or
(J) any other method approved by the board as a tertiary recovery method.

(e) except as provided in subsection (4)(b), a 2% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 3.3% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. The tertiary recovery project must meet the requirements of subsections (1)(d)(i) through (1)(d)(iii).

(f) a 5% local government severance tax on the gross taxable value, as defined in subsection (8)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (9).

(2) For purposes of this section, the following definitions apply:

(a) "Board" means the board of oil and gas conservation.

(b) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(c) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(d) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the change of injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered.

(e) "Incremental production" means:

(i) the volume of oil produced by either a well in primary recovery recompleted as a horizontally completed well or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(A) the commencement of the recompletion of a well as a horizontally completed well;

(B) expansion of the existing enhanced recovery project; or

(C) commencing a new enhanced recovery project; or

(ii) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of petroleum or mineral or crude oil from the enhanced recovery project.

(f) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(g) "Operator" or "producer" means the person responsible for the actual physical operation of an enhanced recovery project.

(h) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(i) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded secondary recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department of revenue by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under subsection (1)(c) or (1)(e).

(j) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project.

(k) "Tertiary recovery project" means an enhanced recovery project using a tertiary recovery method described in subsection (1)(d)(iii).

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(f) of this section.

(4) (a) Incremental production from a secondary recovery project is subject to the tax rate imposed in subsection (1)(c) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a secondary recovery project is taxed as provided in subsection (1)(a) for production occurring in that quarter.

(b) Incremental production from a tertiary recovery project is subject to the tax rate imposed in subsection (1)(e) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a tertiary recovery project is taxed as provided in subsection (1)(d) for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(7) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for the person's own account and for the account of each of the other owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including an owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(8) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(9) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

**History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R.C.M. 1921; amd. Sec. 1, Ch. 67, L. 1923; re-en. Sec. 2398, R.C.M. 1935; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969; amd. Sec. 1, Ch. 245, L. 1975; amd. Sec. 1, Ch. 262, L. 1975; amd. Sec. 1, Ch. 412, L. 1975; amd. Sec. 8, Ch. 156, L. 1977; amd. Sec. 1, Ch. 160, L. 1977; amd. Sec. 3, Ch. 256, L. 1977; R.C.M. 1947, 84-2202; amd. Sec. 1, Ch. 536, L. 1981; amd. Sec. 1, Ch. 671, L. 1983; amd. Sec. 1, Ch. 724, L. 1985; amd. Sec. 3, Ch. 656, L. 1987; amd. Sec. 1, Ch. 589, L. 1989; amd. Sec. 78, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 3, Sp. L. May 1990; amd. Exec. Ord. 12-90, implementing Sec. 7, Ch. 656, L. 1987; amd. Sec. 7, Ch. 267, L. 1991; amd. Sec. 1, Ch. 597, L. 1991; amd. Sec. 1, Ch. 299, L. 1993; amd. Sec. 9, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 in (1)(a) extended reference to subsections (1)(e) and (1)(f); inserted (1)(c) regarding taxation of incremental production from a secondary recovery project; in (1)(d)(iii)(J) substituted "board" for "department"; inserted (1)(e) regarding taxation of certain incremental production from a tertiary recovery project; substituted (2) defining Board, enhanced recovery project, existing enhanced recovery project, expanded enhanced recovery project or expansion, incremental production, new enhanced recovery project, operator or producer, primary recovery, production decline rate, secondary recovery project, and tertiary recovery project for former language that read: "For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the board, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the board must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project"; in (3)(b) extended reference to subsections (1)(e) and (1)(f); inserted (4) and (5) regarding calculation of tax rates on incremental production; adjusted subsection references; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*1993 Amendment:* Chapter 299 in (1), near end of first sentence after "severance tax for", substituted "deposit in the general fund" for "the exclusive use and benefit" and at end substituted "replacement of property taxes formerly levied on net proceeds" for "the exclusive use and benefit of local government"; and made minor changes in style. Amendment effective April 9, 1993.

*Repayment of Foundation Program Money:* Section 2, Ch. 299, L. 1993, provided: "(1) Beginning July 1, 1993, and by June 30, 1998, Saco School Districts No. 12A and B, Whitewater School Districts No. 20AA and D, and Malta School Districts No. 14 and A, Phillips County, shall repay any overdistribution of foundation program money for school fiscal year 1991 attributable to an overdistribution of local government severance tax revenue in the following amounts, plus interest as provided in subsection (2), based on an annual repayment schedule approved by the superintendent of public instruction:

Saco School District No. 12A$135,682
Saco School District No. B 102,003
Whitewater School District No. 20AA 121,924
Whitewater School District No. D 73,196
Malta Elementary School District No. 14 12,923
Malta High School District No. A 8,086

(2) A repayment amount under subsection (1) must include interest at the average annual short-term investment pool rate of the preceding fiscal year."

*Retroactive Applicability:* Section 3, Ch. 299, L. 1993, provided that this section applies retroactively, within the meaning of 1-2-109, to August 11, 1989.

**15-36-104. Record of product — carriers to furnish data.** Each person subject to 15-36-102 shall keep a record in the form that the department requires of all petroleum and other mineral or crude oil or natural gas extracted or produced by the person in this state, and the records must at all times during business hours be subject to inspection by the department. Railroad, pipeline, and transportation companies carrying petroleum and other crude or mineral oil or natural gas shall furnish to the department, whenever requested to do so, all data relative to the shipment of those products that may be required to properly enforce the provisions of this part. The failure of any railroad, pipeline, or transportation company to comply with the provisions of this section subjects the company to a penalty of $100 for each day it fails to furnish the statement.

**History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R.C.M. 1921; amd. Sec. 5, Ch. 67, L. 1923; re-en. Sec. 2402, R.C.M. 1935; amd. Sec. 116, Ch. 516, L. 1973; amd. Sec. 4, Ch. 245, L. 1975; amd. Sec. 9, Ch. 156, L. 1977; R.C.M. 1947, 84-2206; amd. Sec. 122, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, near beginning, inserted "subject to 15-36-102" and at end deleted "or its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-37-203. Records.** Each person subject to 15-37-201 shall keep a record in the form required by the department of all products mined or produced by the person in this state. The records must at all times during business hours be subject to inspection by the department.

**History: En. Sec. 5, Ch. 50, L. 1951; amd. Sec. 227, Ch. 516, L. 1973; R.C.M . 1947, 84-5905; amd. Sec. 123, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, near beginning, inserted "subject to 15-37-201"; at end of second sentence deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-51-104. Inspection of books of producer.** The books and records of an electrical energy producer must be subject to inspection by the department during reasonable hours.

**History: En. Sec. 5, Ch. 51, Ex. L. 1933; re-en. Sec. 2343.5, R.C.M. 1935; amd. Sec. 72, Ch. 516, L. 1973; amd. Sec. 4, Ch. 401, L. 1977; R.C.M. 1947, 84-1605; amd. Sec. 124, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "department" deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-59-104. Manufacturers to keep records.** Each person subject to 15-59-102 shall keep a record in the form required by the department of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum manufactured or produced by the person in this state. The records must at all times during business hours be subject to inspection by the department.

**History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R.C.M. 1921; re-en. Sec. 2360, R.C.M. 1935; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973; R.C.M. 1947, 84-1206; amd. Sec. 125, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, near beginning, inserted "subject to 15-59-102"; in second sentence, at end, deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-59-203. Record of cement received.** (1) Each person subject to 15-59-201 shall keep a record showing all cement, cement plaster, gypsum plaster, and other byproducts of cement:

(a) purchased or received by or delivered to the person for sale by the person at retail in this state for the manufacturing or production of those items; and

(b) for which the license tax has not been paid.

(2) The record must show the date of each purchase or delivery, the number of barrels or tons contained, and the name of the person from whom the items were purchased or received. The records must at all times during business hours be subject to inspection by the department.

**History: En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R.C.M. 1921; re-en. Sec. 2371, R.C.M. 1935; amd. Sec. 34, Ch. 516, L. 1973; R.C.M. 1947, 84-1105; amd. Sec. 126, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in introductory clause of (1) substituted "subject to 15-59-201" for "engaging in or carrying on such occupation in this state"; at end of (2) deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**15-70-101. Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501(6), be placed in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, in accordance with the provisions of 15-1-501(6), be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) $16,766,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(4) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

(5) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(6) Except by a town or third-class city as provided in subsection (2), the funds authorized by this section may not be used for the purchase of capital equipment.

(7) Funds authorized by this section must be used for construction and maintenance programs only.

**History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973; amd. Sec. 1, Ch. 330, L. 1974; amd. Sec. 2, Ch. 514, L. 1975; amd. Sec. 3, Ch. 34, L. 1977; R.C.M. 1947, 84-1840; amd. Sec. 4, Ch. 632, L. 1979; amd. Sec. 2, Ch. 238, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 624, L. 1983; amd. Sec. 1, Ch. 257, L. 1985; amd. Sec. 12, Ch. 703, L. 1985; amd. Sec. 1, Ch. 292, L. 1987; amd. Sec. 11, Ch. 557, L. 1987; amd. Sec. 1, Ch. 82, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 18, Ch. 455, L. 1993; amd. Sec. 1, Ch. 605, L. 1993; amd. Sec. 1, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (1), before "must be allocated", inserted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and". Amendment effective December 20, 1993.

*Retroactive Applicability:* Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

*1993 Amendments:* Chapter 455 in first sentence of introductory clause, after "must", substituted "in accordance with the provisions of 15-1-501(6), be placed" for "be turned over promptly to the state treasurer, who shall place the money" and in second sentence, after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 605 in (1), at beginning, substituted "$16,766,000" for "$14,000,000" and near beginning, after "justice's court", deleted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and"; and in (1)(c), at beginning, substituted "$10,389,000" for "$7,623,000". Amendment effective July 1, 1993.

*Retroactive Applicability:* Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

**15-70-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is and primary source of earned income is from the business of farming or ranching.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter as defined in this section.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or

members and, as applied to joint-stock companies and corporations, the officers.

(14) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

(15) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana.

(16) "Special fuel dealer" means:

(a) any person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) any person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(17) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(18) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

**History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973; amd. Sec. 1, Ch. 473, L. 1975; R.C.M. 1947, 84-1831; amd. Sec. 1, Ch. 350, L. 1979; amd. Sec. 2, Ch. 609, L. 1979; amd. Sec. 1, Ch. 321, L. 1985; amd. Sec. 1, Ch. 220, L. 1987; amd. Sec. 1, Ch. 547, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 1, Ch. 525, L. 1993; amd. Sec. 2, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 deleted definition of authorization that read: ""Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department." Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 inserted definitions of agricultural use, bulk delivery, distributed, distributor, export, exporter, import, and importer; in definition of bond, in (a), near beginning after "executed by a", deleted "special fuel dealer or" and near end, after "obligations of the", deleted "special fuel dealer or" and in (b), after "department by the", deleted "special fuel dealer or"; substituted definition of motor vehicle for former definition that read: "any vehicle which is self-propelled upon the highways"; in definition of special fuel, near end, substituted "operating" for "propelled" and deleted last sentence that read: "The term includes compressed natural gas"; in definition of special fuel dealer deleted former (b) that read: "(b) For the purposes of subsection (9)(a), the term "fuel supply tank or tanks" does not include cargo tanks, even though fuel is withdrawn directly from cargo tanks for propulsion of the vehicle"; in definition of special fuel user, near end, substituted "operation" for "propulsion"; in definition of use, at beginning, inserted "when the term relates to a special fuel user", deleted (a) that read: "(a) the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state", and near end substituted "the operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-302. Special fuel user's permits required — exceptions.** (1) A special fuel user shall obtain a special fuel user's permit annually from the department, prior to the use of special fuel for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight. Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (1) if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement.

**History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(a); amd. Sec. 1, Ch. 599, L. 1979; amd. Sec. 1, Ch. 222, L. 1985; amd. Sec. 4, Ch. 111, L. 1989; amd. Sec. 2, Ch. 547, L. 1989; amd. Sec. 1, Ch. 157, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 525, L. 1993; amd. Sec. 3, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 near beginning of first sentence of (1), after "obtain", inserted "a special fuel user's permit" and at end deleted "a special fuel user's permit" and inserted "in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight"; deleted (4) that read: "(4) A person whose use of special fuel is in special fuel vehicles up to 26,000 pounds gross weight or registered gross vehicle weight shall obtain annually form the department an authorization, as provided in 15-70-309, if the special fuel is not subject to taxation under 15-70-343"; and made minor changes in style. Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 deleted former (1) that read: "(1) A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department"; in (1), near middle of first sentence, substituted "operation" for "propulsion", near beginning of second sentence substituted "subsection (3)" for "subsection (5)", and in third sentence substituted "motor carrier services division employee" for "checking station officer"; deleted former (3) exempting certain vehicles from special fuel user's permit requirement (see 1993 Session Law for text); in (3) substituted "subsection (1)" for "subsection (2)"; deleted former (5)(b) that required the vehicle to be part of a Montana-based fleet (see 1993 Session Law for text); deleted former (5)(c) that required motor vehicle registration card (see 1993 Session Law for text); deleted former (5)(d) requiring that card be carried in vehicle; in (4), after "fuel is", substituted "in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall" for "predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or light trucks may" and at end inserted "if the special fuel is not subject to taxation under 15-70-343"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-303. Application for permit.** (1) Application for a special fuel user's permit must be made to the department unless otherwise provided in this part.

(2) The application must be filed upon a form prepared and furnished by the department. The application must contain information the department considers necessary.

**History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(b), (c); amd. Sec. 2, Ch. 599, L. 1979; amd. Sec. 3, Ch. 547, L. 1989; amd. Sec. 3, Ch. 525, L. 1993; amd. Sec. 4, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (1), after "permit", deleted "or authorization". Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 in (1), after "Application for a", deleted "special fuel dealer's license"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiv-

ing a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.

**History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(d), (i), (j); amd. Sec. 3, Ch. 599, L. 1979; amd. Sec. 1, Ch. 625, L. 1979; amd. Sec. 1, Ch. 262, L. 1987; amd. Sec. 4, Ch. 547, L. 1989; amd. Sec. 1, Ch. 121, L. 1991; amd. Sec. 4, Ch. 525, L. 1993; amd. Sec. 5, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (3) and (4) substituted "15-70-301(2)" for "15-70-301(3)"; and made minor changes in style. Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 in (1), near beginning after "this section, a", deleted "special fuel dealer's license or" and deleted last sentence that read: "Upon application, the department shall waive the bond requirement of a public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity"; in (2), near beginning after "required of a", deleted "special fuel dealer must be equivalent to twice his estimated monthly tax payments, and the total amount of the bond or bonds required of a"; deleted (2)(c) setting a bond at "$1,000 for a special fuel dealer"; in (3), in three places before "special fuel user", deleted "special fuel dealer or", substituted "15-70-301(3)" for "15-70-301(2)", and at end, after "cancel the", deleted "special fuel dealer's license or"; in (4), in four places before "special fuel user", deleted "special fuel dealer or", substituted "15-70-301(3)" for "15-70-301(2)", and at end substituted "the permit" for "his license"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-305. Issuance of permit — grounds for refusal — hearing.** (1) Except as provided in subsection (3), upon receipt of the application and bond in proper form, the department shall issue to the applicant a permit to operate as a special fuel user. Each special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of $100.

(3) The department may refuse to issue a special fuel user's permit to any person:

(a) who formerly held a permit that, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and the permit of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(4) Before refusal to issue a permit, the department shall grant the applicant a hearing and shall grant the applicant at least 10 days' written notice of the time and place of hearing.

(5) A special fuel user's permit is not transferable.

**History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(e) thru (g); amd. Sec. 4, Ch. 599, L. 1979; amd. Sec. 5, Ch. 547, L. 1989; amd. Sec. 5, Ch. 525, L. 1993; amd. Sec. 6, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (1) substituted "subsection (3)" for "subsection (4)"; deleted former (2) that read: "(2) Except as provided in subsection (4), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled"; and in (3), (3)(a), (3)(b), (4), and (5), after "permit", deleted "or authorization". Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 in (1) and (2) substituted "subsection (4)" for "subsection (3)"; in (1), near middle of first sentence after "the applicant a", deleted "license or", after "permit to" substituted "operate" for "act", and after "operate as a" deleted "special fuel dealer or" and in second sentence, after "Each", deleted "special fuel dealer's license or"; inserted (3) concerning payment of a reissuance fee; in (4), after "to issue a", deleted "special fuel dealer's license", in (4)(a), after "held a", deleted "license"; in (4)(b), after "interest and the", deleted "license"; in (5), after "to issue a", deleted "license"; in (6), at beginning after "A", deleted "special fuel dealer's license"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-306. Revocation, suspension, and cancellation.** (1) The department may revoke the permit of any special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a permit, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the permit should not be revoked. However, at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit.

(2) Upon revocation of a permit by the department, the holder shall immediately surrender the permit to the department for cancellation.

**History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973; amd. Sec. 1, Ch. 236, L. 1977; amd. Sec. 1, Ch. 270, L. 1977; R.C.M. 1947, 84-1833(part (h)); amd. Sec. 5, Ch. 599, L. 1979; amd. Sec. 6, Ch. 547, L. 1989; amd. Sec. 6, Ch. 525, L. 1993; amd. Sec. 7, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in four places in (1), after "permit", deleted "or authorization"; in (2), after "revocation", inserted "of a permit", after "department" deleted "of any permit or authorization", and near end, after "permit", deleted "or authorization"; and made minor changes in style. Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 in (1), in first sentence near beginning after "may revoke the", deleted "license" and after "authorization of any" deleted "special fuel dealer or" and in second sentence, after "Before revoking a", deleted "license", after "shall notify the" deleted "licensee or", and near end, in two places before "permit", deleted "license"; in (2), in two places before "permit", deleted "license"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-309. Repealed.** Sec. 20, Ch. 10, Sp. L. November 1993.

**History: En. Sec. 7, Ch. 547, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 8, Ch. 525, L. 1993.**

**15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit.** (1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

**History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973; amd. Sec. 1, Ch. 440, L. 1975; R.C.M. 1947, 84-1842; amd. Sec. 2, Ch. 222, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 8, Ch. 512, L. 1991; amd. Sec. 9, Ch. 525, L. 1993; amd. Sec. 3, Ch. 575, L. 1993; amd. Sec. 8, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Deleted (3) that read: "(3) A resident or nonresident operating a special fuel powered vehicle up to 26,000 pounds gross weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase." Amendment effective January 1, 1994.

*1993 Amendments:* Chapter 525 in (1) and (2), near beginning, inserted "over 26,000 pounds gross vehicle weight or registered gross vehicle weight" and substituted "motor carrier services division employees" for "scale house personnel, gross vehicle weight patrol crews"; in (1), near middle after "special fuel vehicle permit", deleted "or registration card indicating the special fuel use permit number"; inserted (3) concerning exemption from authorization; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 575 near end of (1) and (2) substituted "motor carrier services division personnel" for "gross vehicle weight patrol crews"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-315. Repealed.** Sec. 20, Ch. 10, Sp. L. November 1993.

**History: En. Sec. 2, Ch. 220, L. 1987; amd. Sec. 11, Ch. 525, L. 1993.**

**15-70-321. Tax on diesel fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public highways or streets within the state; and

(b) for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions.

(2) The tax imposed in subsection (1) is:

(a) 24 cents per gallon beginning July 1, 1993;

(b) 24 3⁄4 cents per gallon beginning January 1, 1994; and

(c) 27 3⁄4 cents per gallon beginning July 1, 1994.

**History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973; amd. Sec. 2, Ch. 473 L. 1975; amd. Sec. 1, Ch. 514, L. 1975; amd. Sec. 4, Ch. 390, L. 1977; R.C.M. 1947, 84-1832.1; amd. Sec. 3, Ch. 632, L. 1979; amd. Sec. 2, Ch. 624, L. 1983; amd. Sec. 2, Ch. 30, L. 1987; amd. Sec. 12, Ch. 525, L. 1993; amd. Sec. 23, Ch. 575, L. 1993; amd. Sec. 3, Ch. 605, L. 1993; amd. Sec. 9, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (1)(a), before "diesel fuel", inserted "undyed"; at beginning of (1)(b) inserted "for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold"; and made minor changes in style. Amendment effective January 1, 1994.

*1993 Amendments:* Chapter 525 near middle, after "power to", substituted "operate" for "propel". Amendment effective January 1, 1994.

Chapter 605 in (1), near beginning after "tax", substituted "as provided in subsection (2)" for "in an amount equal to 20 cents"; inserted (2) providing for a tax of 24 cents a gallon beginning July 1, 1993, and 27 cents a gallon beginning July 1, 1994; and made minor changes in style. Amendment effective July 1, 1993.

*Coordination:* Section 4, Ch. 575, L. 1993, increased the tax by 3/4 cent per gallon effective January 1, 1994. Section 23, Ch. 575, L. 1993, a coordination provision, voided the amendment made by sec. 4, Ch. 575, L. 1993, and increased the tax rates in sec. 3, Ch. 605, by 3/4 cent per gallon effective January 1, 1994. The Code Commissioner inserted the rate of 24 3⁄4 cents per gallon effective January 1, 1994, and increased the rate to 27 3⁄4 cents per gallon effective July 1, 1994, to reflect the coordination instruction.

**15-70-324. Examination of records — enforcement of part.** (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and may investigate the character of the disposition that any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply

tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense.

(5) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state.

**History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973; amd. Sec. 2, Ch. 34, L. 1977; R.C.M. 1947, 84-1838(part); amd. Sec. 2, Ch. 16, L. 1983; amd. Sec. 14, Ch. 525, L. 1993; amd. Sec. 10, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 inserted (4) authorizing the Department to establish inspection sites and to stop, detain, and inspect vehicles and making it a misdemeanor punishable by a fine not exceeding $500 for first offense, not exceeding $1,000 for second offense, and not exceeding $2,000 for subsequent offenses to purposely or knowingly refuse to permit an authorized inspection; and made minor changes in style. Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 in (2), (3), and (4), in five places before "special fuel user", deleted "special fuel dealer or"; in (3), near end after "consumed in the", substituted "operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues; provided, however, that if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, there must be added to the amount due and unpaid interest at the rate of 1% per month or fraction of a month from the date the tax was due to the date of payment in full.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public highways or streets within the state unless the fuel is subject to taxation under 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public highways or streets within the state in violation of this subsection is a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

**History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973; amd. Sec. 1, Ch. 258, L. 1977; amd. Sec. 1, Ch. 377, L. 1977; R.C.M. 1947, 84-1835(d), (e); amd. Sec. 1, Ch. 591, L. 1979; amd. Sec. 20, Ch. 525, L. 1993; amd. Sec. 11, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 inserted (3) prohibiting the use of dyed special fuel to operate a motor vehicle unless the fuel is subject to taxation or the use is permitted by adopted rules, making it a misdemeanor to purposely or knowingly use a dyed special fuel in a motor vehicle in violation of subsection (3) punishable by a fine not to exceed $500 for first offense, not to exceed $1,000 for second offense, and not to exceed $2,000 for subsequent offenses, and requiring the Department to adopt and enforce reasonable rules for movement of off-highway vehicles traveling from one location to another on public roads when using dyed or nontaxed fuels; and made minor changes in style. Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 525 in (1), near beginning after "case of any", deleted "special fuel dealer or" and near middle, after "that if any", deleted "such special fuel dealer"; in (2), at beginning, substituted "Whenever" for "Where a special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

**15-70-341. License, fee, and security of special fuel distributors.** (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(4) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

**History: En. Sec. 24, Ch. 525, L. 1993; amd. Sec. 12, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (2) substituted "15-70-301(7)(c)" for "15-70-301(8)(c)"; and made minor changes in style. Amendment effective January 1, 1994.

*Effective Date:* Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

**15-70-343. Special fuel license tax — rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if it is:

(a) dyed at a refinery or terminal for off-highway use; or

(b) sold for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

**History: En. Sec. 26, Ch. 525, L. 1993; amd. Sec. 13, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (1), in second sentence, substituted "amount imposed under 15-70-321" for "amount of 20 cents"; in (2), at end of introductory clause after "tax if", deleted "sold" and inserted "it is", substituted (2)(a) concerning fuel dyed for off-highway use for "to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state", deleted former (2)(b) that read: "in bulk delivery quantities of 200 gallons or more"; at beginning of (2)(b) inserted "sold"; and made minor changes in style. Amendment effective January 1, 1994.

*Code Commissioner Clarification:* In second sentence of (1), after "amount", the Code Commissioner substituted the bracketed reference to 15-70-321 for "of 20 cents" to reflect the coordination of Ch. 575 and Ch. 605, L. 1993.

*Effective Date:* Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

**15-70-349. Examination of records.** (1) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

(3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for

the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense.

**History: En. Sec. 30, Ch. 525, L. 1993; amd. Sec. 14, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 inserted (3) authorizing the Department to physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities and making it a misdemeanor punishable by a fine not exceeding $500 for first offense, not exceeding $1,000 for second offense, and not exceeding $2,000 for subsequent offenses to purposely or knowingly refuse to permit an authorized inspection; and made minor changes in style. Amendment effective January 1, 1994.

*Effective Date:* Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

**15-70-356. Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines, tractors used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel so used. The refund may not exceed the tax paid or to be paid to the state.

(2) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund.

**History: En. Sec. 36, Ch. 525, L. 1993; amd. Sec. 15, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 inserted (2) concerning refund of the taxes paid on special fuel by government entities; deleted former (3) that read: "(3) A distributor who sells special fuel that is not subject to taxation under 15-70-343 shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report"; and made minor changes in style. Amendment effective January 1, 1994.

*Effective Date:* Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

**15-70-361. Required records.** (1) Except as provided in subsection (5), special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for which a refund is to be claimed.

(3) When a highway use of special fuel is not deducted from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is not required to keep dispersal records in order to claim a refund of special fuel taxes.

(6) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

**History: En. Sec. 37, Ch. 525, L. 1993; amd. Sec. 16, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 at beginning of (1) inserted exception clause; near end of (2), after "fuel for", deleted "own use upon"; inserted (5) exempting government entities from keeping dispersal records in order to claim a refund of special fuel taxes; and made minor changes in style. Amendment effective January 1, 1994.

*Effective Date:* Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

**15-70-364. Application for refund or credit — filing — correction by department.** (1) The application for a refund must be a signed statement on a form furnished by the department. Except for a claim for a credit for taxes paid on unpaid accounts or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

**History: En. Sec. 40, Ch. 525, L. 1993; amd. Sec. 17, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 in (1), near beginning of second sentence after "unpaid accounts", inserted "or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state"; and made minor changes in style. Amendment effective January 1, 1994.

*Effective Date:* Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

**17-1-507 through 17-1-509 reserved.**

**17-1-510. State indirect cost recovery plan.** (1) The department shall annually prepare a state indirect cost recovery plan. The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund be allocated among the agencies served by those programs.

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1, March 1, and June 1 of each fiscal year, by depositing the payments into the general fund.

**History: En. Sec. 3, Ch. 37, Sp. L. November 1993.**

**Compiler's Comments**

*Effective Date:* Section 5, Ch. 37, Sp. L. November 1993, provided: "[This act] is effective on passage and approval." Approved January 5, 1994.

**17-3-111. Indirect cost rates — allocation.** (1) Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the general fund.

**History: En. 79-1022 by Sec. 3, Ch. 223, L. 1975; R.C.M. 1947, 79-1022; amd. Sec. 1, Ch. 37, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 37 inserted (2) requiring deposit of recovered indirect costs, except those recovered by the University System, in the general fund. Amendment effective January 5, 1994.

**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

**History: En. Sec. 26, Ch. 505, L. 1981; amd. Sec. 18, Ch. 298, L. 1983; amd. Sec. 2, Ch. 512, L. 1985; amd. Sec. 3, Ch. 722, L. 1991; amd. Secs. 3, 7, Ch. 12, Sp. L. January 1992;**

**amd. Sec. 4, Ch. 515, L. 1993; amd. Sec. 1, Ch. 8, Sp. L. November 1993; amd. Sec. 1, Ch. 33, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendments:* Chapter 8 near beginning of (2)(a), after "determine", inserted "on July 1 of each year" and near end, before "and retain", substituted "during the next 12 months" for "on the next two ensuing semiannual payment dates"; inserted (2)(b) requiring the transfer of excess tax bond fund amounts; in (4)(a), before "transfer", inserted "quarterly" and after "endowment fund" substituted "50% of the" for "any"; deleted former (6)(a) that read: "(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year"; in first sentence of (4)(b), after "shall", substituted "monthly transfer from the treasure state endowment fund" for "annually transfer" and before "earnings" deleted "interest" and at beginning of second sentence substituted "Earnings" for "Interest earnings"; inserted (5) requiring transfer of excess unallocated tax bond fund amounts into the permanent fund; and made minor changes in style. Amendment effective December 17, 1993.

Chapter 33 deleted former (1)(c) providing for a clean coal technology demonstration fund; deleted former (4) providing for transfers from the coal severance tax bond fund to the clean coal technology demonstration fund; adjusted subsection references; and made minor changes in style. Amendment effective January 3, 1994.

*Required Fund Transfer:* Section 2, Ch. 8, Sp. L. November 1993, provided: "The state treasurer shall on [the effective date of this act] [effective December 17, 1993] transfer from the coal severance tax bond fund to the coal severance tax permanent fund the cash balance of the bond fund as of July 1, 1993, that is in excess of the amount required by 17-5-703(2)(a), including the amount either held in the fund for the clean coal technology demonstration fund or required to be transferred to the clean coal technology demonstration fund. The provisions of this section do not affect the authorizations contained in section 10, Chapter 722, Laws of 1991." The section related to a temporary, one-time transfer of funds and therefore was not codified.

*Funds Transfer Repealed:* Section 3, Ch. 8, Sp. L. November 1993, repealed sec. 11, Ch. 722, L. 1991, which had transferred $25 million from the coal severance tax permanent fund to the clean coal technology demonstration fund. Repealer effective December 17, 1993.

*Loan Authorization — Appropriation of Loan Proceeds:* Section 3, Ch. 354, L. 1993, provided: "In addition to the litigation listed in [sections 1 and 2] [not codified, see 1993 Session Laws], loan proceeds are authorized for the purpose of conducting any other natural resource damage assessment, litigation, or administration as provided by Title 75, chapter 10, part 7."

*Loan Contract:* Section 5, Ch. 354, L. 1993, provided: "In order to make the loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws], the board of investments shall enter into an irrevocable contract with the department of health and environmental sciences pledging the amount recovered in the litigation to the repayment of the loans. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loans from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws] may not be made until the contract required by this section has been entered into by the board and the department."

*1993 Amendment:* Chapter 515 in (4), near end, substituted "department of revenue shall, upon request from the department of natural resources and conservation" for "state treasurer shall from time to time" and after "amount" substituted "up to" for "not exceeding". Amendment effective April 24, 1993.

**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Except as provided in this chapter, another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

**History: (1), (2), (5) thru (7)En. Sec. 5, Ch. 298, L. 1973; amd. Sec. 1, Ch. 203, L. 1977; Sec. 79-308, R.C.M. 1947; (3), (4)En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; Sec. 82A-204, R.C.M. 1947; R.C.M. 1947, 79-308, 82A-204(4); amd. Sec. 1, Ch. 395, L. 1981; amd. Sec. 11, Ch. 281, L. 1983; amd. Sec. 19, Ch. 677, L. 1983; amd. Sec. 2, Ch. 183, L. 1985; amd. Sec. 3, Ch. 418, L. 1985; amd. Sec. 1, Ch. 158, L. 1987; amd. Sec. 1, Ch. 335, L. 1987; amd. Sec. 12, Ch. 581, L. 1987; amd. Sec. 1, Ch. 291, L. 1991; amd. Sec. 1, Ch. 46, L. 1993; amd. Sec. 1, Ch. 331, L. 1993; amd. Sec. 2, Ch. 37, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 37 deleted (9) that read: "(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (9)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund, as defined in 17-2-102, must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202"; and made minor changes in style. Amendment effective January 5, 1994.

*1993 Amendments — Composite Section:* Chapter 46 inserted (2)(b) prohibiting investment in private corporate capital stock; inserted (3)(d) prohibiting a direct loan to an individual borrower; in (4), at end of second sentence, inserted "unless otherwise provided by law"; inserted (6)(d) allowing expenditure of funds needed to cover costs of necessary property repairs; and made minor changes in style.

Chapter 331 in (4), in first sentence before "authority", substituted "primary" for "sole" and at beginning of second sentence inserted exception clause; inserted (8) relating to Board reimbursement to the Department of administrative costs not covered by payback funds; in (9)(a) substituted "subsection (9)(b)" for "subsection (8)(b)"; in (9)(b) substituted "subsection (9)(a)" for "subsection (8)(a)"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1)(a), (1)(c), (2)(a), (3)(a), (5)(e), and (7) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

**17-7-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or

instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system.

(3) "Approved long-range building program budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

(4) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(5) "Base budget" means that level of funding authorized by the previous legislature.

(6) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures.

(7) "Present law base" means that additional level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally manadated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(8) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(9) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(10) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(11) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(12) "Priority listing" means a ranking of proposed expenditures in order of importance.

(13) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(14) "Program size" means the magnitude of a program, such as the size of clientele served or the volume of service in relation to the population or area.

(15) "Program size indicator" means a measure to indicate the magnitude of a program.

(16) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(17) "University system unit" means the board of regents of higher education, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices at Butte, the fire services training school at Great Falls, the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula, or the community colleges at Miles City, Glendive, and Kalispell.

**History: En. 79-1012.1 by Sec. 1, Ch. 460, L. 1975; R.C.M. 1947, 79-1012.1; amd. Sec. 1, Ch. 596, L. 1983; amd. Sec. 5, Ch. 787, L. 1991; amd. Sec. 2, Ch. 12, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 12 inserted definitions of base budget, present law base, and new proposals; deleted definition of current funding level that read: ""Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation"; deleted definition of modified funding level that read: ""Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding"; and made minor changes in style. Amendment effective December 23, 1993.

**17-7-111. Agency program budgets — form distribution and contents.** (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms must be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for the current base budget expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained in the summary by fund and, when applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented must include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives. The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law.

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(e) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program.

(f) other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(4) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (4). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(5) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

**History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 666, L. 1983; amd. Sec. 1, Ch. 343, L. 1985; amd. Sec. 4, Ch. 5, Sp. L. July 1992; amd. Sec. 3, Ch. 20, L. 1993; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 1, Ch. 13, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 13 in (2)(d)(i) deleted last sentence that read: "Any discretionary programs established by the agency that are not required by law must also be enumerated"; inserted (2)(e) requiring agency, when submitting budget request, to specify whether operation of each agency program is discretionary or whether program operation, administration, or management is required by federal or state law; and made minor changes in style. Amendment effective December 23, 1993.

*Code Commissioner Instruction:* Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (2)(a), near beginning, substituted "the current base budget" for "current level". Amendment effective December 23, 1993.

*1993 Amendment:* Chapter 20 inserted (5) regarding provision of individual income tax data to the Budget Director; and made minor changes in style.

**17-7-122. Submission of budget to legislature.** (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to each member of the legislature at the time of the convening of the legislature.

(2) Legislative branch requests must be included in the budget submitted by the governor without changes.

(3) Judicial branch requests must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123.

**History: (1)En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; Sec. 79-1015, R.C.M. 1947; (2)En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; Sec. 79-1013, R.C.M. 1947; R.C.M. 1947, 79-1015(part), 79-1013(part); amd. Sec. 1, Ch. 657, L. 1991; amd. Sec. 3, Ch. 12, Sp. L. November 1993.**

**Compiler's Comments**

*Code Commissioner Instruction:* Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (3) substituted "the current base budget" for "current level funding". Amendment effective December 23, 1993.

**17-7-123. Form of executive budget.** The budget submitted must set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan must consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund and, when applicable, organizational unit;

(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented must include the following:

(a) a summary of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the current base budget and the current base budget plus new proposals, if any, for each department and each program of the department;

(c) a reference for each program as required under 17-7-111(2)(e); and

(d) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category and other matters considered necessary; and

(5) detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure must be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended.

**History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; R.C.M. 1947, 79-1015(part); amd. Sec. 2, Ch. 596, L. 1983; amd. Sec. 22, Ch.**

**349, L. 1993; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 2, Ch. 13, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 13 inserted (4)(c) requiring executive budget to specify whether agency program is discretionary or mandated by federal or state law; and made minor changes in style. Amendment effective December 23, 1993.

*Code Commissioner Instruction:* Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (4)(b) substituted "base budget and the current base budget plus new proposals" for "funding level and the modified funding level". Amendment effective December 23, 1993.

*1993 Amendment:* Chapter 349 at beginning of (4)(a) substituted "summary" for "statement"; at beginning of (4)(b) inserted "actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and" and at end, after "department", deleted remainder of former (4) through (4)(d) that read: "The funding levels must show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category"; in (4)(c), after "containing", deleted "further" and after "governor" substituted "for the ensuing biennium by program and disbursement category and other matters considered" for "should he deem it"; deleted (6) that read: "(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state"; and made minor changes in style.

**17-7-304.** *(Temporary)* **Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets pur-

chases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. *(Terminates June 30, 1996—sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)*

**17-7-304.** *(Effective July 1, 1996)* **Disposal of unexpended appropriations.** (1) Except as provided in subsection (2), all money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. *(Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)*

**17-7-304.** *(Effective July 1, 1997)* **Disposal of unexpended appropriations.** All money appropriated for any specific purpose must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

**History: En. Sec. 2, H.B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R.C.M. 1921; re-en. Sec. 304, R.C.M. 1935; amd. Sec. 14, Ch. 147, L. 1963; Sec. 79-1011, R.C.M. 1947; amd. and redes. 79-1015.3 by Sec. 32, Ch. 326, L. 1974; R.C.M. 1947, 79-1015.3; amd. Sec. 6, Ch. 787, L. 1991; amd. Sec. 2, Ch. 5, Sp. L. July 1992; amd. Sec. 31, Ch. 10, L. 1993; amd. Sec. 8, Ch. 23, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* (Temporary version) Chapter 23 in (1), after "subsection (2)", inserted "and except as provided in subsection (4)"; and inserted (4) concerning agency retention of 30% of the money appropriated to an agency for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year to be spent for any purpose that is consistent with the goal and objectives of the agency. Amendment effective December 23, 1993.

(Version effective July 1, 1996) At beginning of (1) inserted exception clause; and inserted (2) concerning agency retention of 30% of the money appropriated to an agency for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year to be spent for any purpose that is consistent with the goal and objectives of the agency. Amendment effective December 23, 1993, and terminates July 1, 1997.

*Termination:* Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

*1993 Amendment:* Chapter 10 in 1996 version, in first sentence after "purpose", deleted "except those appropriated for the university system units listed in subsection (2)"; and made minor changes in style. Amendment effective June 30, 1996.

**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates July 1, 1995.)*

**History: En. Sec. 2, Ch. 703, L. 1985; amd. Sec. 2, Ch. 244, L. 1985; amd. Sec. 11, Ch. 395, L. 1985; amd. Sec. 20, Ch. 635, L. 1985; amd. Sec. 19, Ch. 688, L. 1985; amd. Sec. 14, Ch. 701, L. 1985; amd. Sec. 14, Ch. 720, L. 1985; amd. Sec. 15, HB 861, L. 1985; amd. Sec.**

**10, HB 922, L. 1985; amd. Sec. 10, Ch. 161, L. 1987; amd. Sec. 2, Ch. 164, L. 1987; amd. Sec. 1, Ch. 265, L. 1987; amd. Sec. 8, Ch. 453, L. 1987; amd. Sec. 3, Ch. 454, L. 1987; amd. Sec. 30, Ch. 457, L. 1987; amd. Sec. 10, Ch. 460, L. 1987; amd. Sec. 21, Ch. 461, L. 1987; amd. Sec. 6, Ch. 465, L. 1987; amd. Sec. 11, Ch. 563, L. 1987; amd. Sec. 10, Ch. 603, L. 1987; amd. Sec. 10, Ch. 607, L. 1987; amd. Sec. 5, Ch. 664, L. 1987; amd. Sec. 14, Ch. 665, L. 1987; amd. Sec. 12, HB 621, L. 1987; amd. Sec. 1, Ch. 62, L. 1989; amd. Sec. 38, Ch. 262, L. 1989; amd. Sec. 23, Ch. 316, L. 1989; amd. Sec. 7, Ch. 324, L. 1989; amd. Sec. 1, Ch. 408, L. 1989; amd. Sec. 11, Ch. 473, L. 1989; amd. Sec. 13, Ch. 528, L. 1989; amd. Sec. 2, Ch. 530, L. 1989; amd. Sec. 3, Ch. 628, L. 1989; amd. Sec. 62, Ch. 642, L. 1989; amd. Sec. 13, Ch. 672, L. 1989; amd. Sec. 14, Ch. 678, L. 1989; amd. Sec. 10, Ch. 10, Sp. L. June 1989; amd. Sec. 6, Ch. 11, Sp. L. June 1989; amd. Sec. 16, Ch. 16, L. 1991; amd. Sec. 1, Ch. 344, L. 1991; amd. Sec. 2, Ch. 370, L. 1991; amd. Sec. 4, Ch. 394, L. 1991; amd. Sec. 2, Ch. 493, L. 1991; amd. Sec. 1, Ch. 495, L. 1991; amd. Sec. 2, Ch. 567, L. 1991; amd. Sec. 4, Ch. 571, L. 1991; amd. Sec. 1, Ch. 575, L. 1991; amd. Sec. 2, Ch. 600, L. 1991; amd. Sec. 10, Ch. 602, L. 1991; amd. Sec. 19, Ch. 609, L. 1991; amd. Sec. 5, Ch. 641, L. 1991; amd. Sec. 52, Ch. 647, L. 1991; amd. Sec. 1, Ch. 690, L. 1991; amd. Sec. 7, Ch. 701, L. 1991; amd. Sec. 14, Ch. 748, L. 1991; amd. Sec. 7, Ch. 787, L. 1991; amd. Sec. 3, Ch. 819, L. 1991; amd. Sec. 18, Ch. 823, L. 1991; amd. Sec. 2, Ch. 46, L. 1993; amd. Sec. 4, Ch. 69, L. 1993; amd. Sec. 3, Ch. 107, L. 1993; amd. Sec. 5, Ch. 108, L. 1993; amd. Sec. 3, Ch. 127, L. 1993; amd. Sec. 2, Ch. 195, L. 1993; amd. Sec. 2, Ch. 234, L. 1993; amd. Sec. 233, Ch. 265, L. 1993; amd. Sec. 3, Ch. 330, L. 1993; amd. Sec. 2, Ch. 389, L. 1993; amd. Sec. 3, Ch. 395, L. 1993; amd. Sec. 8, Ch. 415, L. 1993; amd. Sec. 4, Ch. 450, L. 1993; amd. Sec. 15, Ch. 452, L. 1993; amd. Sec. 2, Ch. 492, L. 1993; amd. Sec. 11, Ch. 526, L. 1993; amd. Sec. 9, Ch. 534, L. 1993; amd. Sec. 18, Ch. 555, L. 1993; amd. Sec. 4, Ch. 578, L. 1993; amd. Sec. 7, Ch. 581, L. 1993; amd. Sec. 4, Ch. 605, L. 1993; amd. Sec. 13, Ch. 613, L. 1993; amd. Sec. 6, Ch. 625, L. 1993; amd. Sec. 11, Ch. 630, L. 1993; amd. Sec. 3, Ch. 635, L. 1993; amd. Sec. 18, Ch. 10, Sp. L. November 1993; amd. Sec. 2, Ch. 36, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendments:* Chapter 10 in (3) inserted "15-70-101" in list of statutory references. Amendment effective December 20, 1993.

Chapter 36 in (3) deleted "20-6-406" from list of statutory references. Amendment effective July 1, 1994.

*Retroactive Applicability:* Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

*1993 Amendments:* Chapter 46 in (3) inserted "17-6-201" in list of statutory references.

Chapter 69 in (3) inserted "80-2-222" in list of statutory references. Amendment effective February 22, 1993.

Chapter 107 in (3) inserted "17-3-106" and "17-6-101" in list of statutory references. Amendment effective July 1, 1993.

Chapter 108 in (3) inserted "81-5-111" in list of statutory references.

Chapter 127 in (3) inserted "60-2-220" in list of statutory references.

Chapter 195 in (3) deleted "61-5-121" from list of statutory references.

Chapter 234 in (3) inserted "5-13-403" in list of statutory references. Amendment effective March 31, 1993.

Chapter 265 in (3) inserted "19-2-502" in and deleted "19-5-404", "19-8-504", "19-9-702", and "19-13-604" from list of statutory references. Amendment effective July 1, 1993.

Chapter 330 in (3) inserted "3-5-901" in list of statutory references. Amendment effective April 13, 1993.

Chapter 389 in (3) inserted "50-40-206" in list of statutory references.

Chapter 395 in (3) inserted "32-1-537" in list of statutory references.

Chapter 415 in (3) inserted "50-5-232" in list of statutory references.

Chapter 450 in (3) deleted "19-8-504" from list of statutory references. Amendment effective July 1, 1993.

Chapter 452 in (3) inserted "80-4-416" in list of statutory references. Amendment effective July 1, 1993.

Chapter 492 in (3) inserted "61-2-107" in list of statutory references. Amendment effective July 1, 1993.

Chapter 526 in (3) inserted "20-26-1403" in list of statutory references. Amendment effective April 24, 1993.

Chapter 534 in (3) inserted "90-14-107" in list of statutory references. Amendment effective April 24, 1993, and terminates July 1, 1995.

Chapter 555 in (3) inserted "39-71-503; 39-71-907" in list of statutory references. Amendment effective July 1, 1993.

Chapter 578 in (3) inserted "23-2-823" in list of statutory references.

Chapter 581 in (3) deleted "13-37-304" from list of statutory references. Amendment effective April 28, 1993.

Chapter 605 in (3) deleted "15-70-101" from list of statutory references. Amendment effective July 1, 1993.

Chapter 613 in (3) inserted "15-38-202" in list of statutory references. Amendment effective July 1, 1993.

Chapter 625 in (3) inserted "18-11-112" in list of statutory references. Amendment effective July 1, 1993.

Chapter 630 in (3) inserted "39-71-2321" in list of statutory references. Amendment effective July 1, 1993.

Chapter 635 in (3) inserted "85-2-707" in list of statutory references.

*Purported 1993 Amendment — Coordination:* Section 13(1), Ch. 352, L. 1993, provided: "If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void." House Bill No. 92 was approved as Ch. 625, L. 1993, and contained the provisions alluded to in the coordination instruction. Chapter 352 inserted references in the (3) list of statutory references to sections 4 and 5 of Ch. 352, L. 1993, which were enacted but subsequently rendered void by the enactment of Ch. 625, L. 1993. The effect was that this section, although purportedly amended by sec. 11, Ch. 352, was not actually amended by that chapter.

*Coordination:* Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

*Effective Date — Applicability:* Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

*Termination — Disposition of Funds:* Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

**17-8-306. Issuance of duplicate warrant.** (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by the state auditor upon the treasurer of the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate". A duplicate warrant may not be issued or delivered unless the person entitled to receive it deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued indemnifying the state and its officers and employees from any loss resulting from the issuance of the duplicate warrant.

(2) A bond of indemnity is not required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer of the state;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state auditor has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has been committed and that as a result a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19;

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26; or

(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), a stop-payment order must be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), the application must include an agreement to indemnify the state and its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant must be charged against the account from which the payment was derived.

**History: En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R.C.M. 1921; re-en. Sec. 159, R.C.M. 1935; amd. Sec. 4, Ch. 94, L. 1969; amd. Sec. 1, Ch. 318, L. 1977; R.C.M. 1947, 79-109; amd. Sec. 1, Ch. 181, L. 1985; amd. Sec. 1, Ch. 50, L. 1987; amd. Sec. 1, Ch. 118, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 5 inserted (2)(l) providing exemption from indemnity bond requirement for a state agency that approves the issuance of duplicate warrant and assumes the risk of cashing original warrant; in (3) and (4) inserted reference to subsection (2)(l); and made minor changes in style. Amendment effective December 16, 1993.

**18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3) of this section. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) At the time that the department or a purchasing agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or purchasing agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program through bulk purchase or procured under a term contract may be purchased by a purchasing agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the purchasing agency is less than the price offered by the central stores program or under the term contract if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program or under the term contract. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

**History: En. Sec. 13, Ch. 519, L. 1983; amd. Sec. 2, Ch. 303, L. 1987; amd. Sec. 1, Ch. 329, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 11 near middle of (3), after "publicly advertised", inserted "price", after "catalog price" inserted "or discount price offered to the purchasing agency", and after "term contract" inserted "if the office supply"; and made minor changes in style.

**19-3-908. Retirement incentive program — window of eligibility.** (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for normal service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year shall forfeit the additional service. The employer's contributions to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

**History: En. Sec. 1, Ch. 567, L. 1993; amd. Sec. 127, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 inserted (2)(b) concerning purchase of service for qualifying county assessors and deputy assessors; at beginning of (4) inserted "Subject to subsection (2)(b)" and at end substituted "subsection (6)" for "subsection (5)"; inserted (5) concerning county assessors and deputy assessors in county not electing participation; adjusted subsection references; and made minor changes in style. Amendment effective December 27, 1993.

*Retroactive Applicability:* Section 171(1), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply retroactively to terminations on or after June 25, 1993.

*Temporary — Montana University System Voluntary Termination for Teachers' Retirement System Members:* Section 2, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all members of the teachers' retirement system employed on a full-time basis on or before February 1, 1993, who are eligible for normal service retirement under 19-4-801 [19-20-801] and 19-4-802 [19-20-802]. The termination incentive, combined with employer contributions due the teachers' retirement system under 19-4-101(5)(d) [19-20-101(5)(d)], must be an amount equal to 1 year of the combined member and employer contributions established in 19-4-602 [19-20-602] and 19-4-605 [19-20-605] for each 5 years of creditable service within the teachers' retirement system, not to exceed the amount of combined contributions for 3 years.

(2) A member who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

*Temporary — Montana University System Voluntary Termination for Optional Teachers' Retirement System Participants:* Section 3, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all optional retirement participants who are employed on a full-time basis on or before February 1, 1993, and who are at least 50 years of age on or before the date of termination. The incentive must be an amount equal to 1 year of the combined member and board of regents contributions established in 19-21-203 for each 5 years of service with the Montana university system, not to exceed the amount of combined contributions for 3 years.

(2) A participant who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant

shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

*Reports on Effect of Incentives:* Section 4, Ch. 567, L. 1993, provided: "The department of administration, in cooperation with the university system and the public employees' retirement board, shall report to the 54th legislature on the effect of the retirement incentive offered to members of the public employees' retirement system employed by the state, including the university system. The board of regents, in cooperation with the teachers' retirement board, shall report to the 54th legislature on the effect of the voluntary termination incentives offered to members of the teachers' retirement system employed by the Montana university system. These reports must include, but are not limited to:

(1) a summary of the positions from which employees terminated employment under the provisions of [section 1] [19-3-908];

(2) whether positions vacated under [section 1] [19-3-908] were refilled and when; and

(3) the cost or savings resulting from the implementation of [section 1] [19-3-908]." Effective April 28, 1993, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

*Retroactive Applicability:* Section 5, Ch. 567, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993."

*Effective Date:* Section 7, Ch. 567, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

**20-5-321. Attendance with mandatory approval — tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and:

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of family services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.

**History: En. Sec. 2, Ch. 563, L. 1993; amd. Sec. 1, Ch. 32, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Inserted (1)(a)(i) concerning resident district not providing transportation and (1)(a)(ii) relating to resident district not within county providing transportation; and made minor changes in style. Amendment effective January 3, 1994.

*Effective Date — Retroactive Applicability:* Section 2, Ch. 32, Sp. L. November 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to attendance agreements signed after [the effective date of this act] [January 3, 1994] for the school fiscal year beginning July 1, 1994."

*Effective Date — Applicability:* Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

**20-6-401 through 20-6-408. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

**Compiler's Comments**

*Histories of Repealed Sections:*

**20-6-401.** En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541; amd. Sec. 1, Ch. 205, L. 1981; amd. Sec. 1, Ch. 185, L. 1985; amd. Sec. 4, Ch. 337, L. 1989; amd. Sec. 13, Ch. 11, Sp. L. June 1989.

**20-6-402.** En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540; amd. Sec. 11, Ch. 617, L. 1983.

**20-6-403.** En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542; amd. Sec. 12, Ch. 617, L. 1983.

**20-6-404.** En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

**20-6-405.** En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

**20-6-406.** En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545; amd. Sec. 30, Ch. 703, L. 1985.

**20-6-407.** En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

**20-6-408.** En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

**20-6-703. Transitions after formation of K-12 school district.** (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the board of county commissioners shall execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to 20-9-308.

**History: En. Sec. 3, Ch. 555, L. 1991; amd. Sec. 49, Ch. 633, L. 1993; amd. Sec. 3, Ch. 36, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 36 deleted (4) that read: "(4) An elementary district and a high school district that form a K-12 school district under the provisions of 20-6-701 may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408." Amendment effective July 1, 1994.

*1993 Amendment:* Chapter 633 in (3), at end, substituted "20-9-308" for "20-9-315". Amendment effective July 1, 1993.

**20-7-504. State traffic education account — proceeds earmarked for the account.** (1) There is a traffic education account in the treasury of the state of Montana.

(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506.

(3) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities.

**History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979; amd. Sec. 1, Ch. 487, L. 1981; amd. Sec. 7, Ch. 277, L. 1985; amd. Sec. 13, Ch. 557, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 701, L. 1991; amd. Sec. 2, Ch. 11, Sp. L. July 1992; amd. Sec. 3, Ch. 39, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 39 in (1), after first sentence, deleted: "There must be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of transportation peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail"; deleted former (2) providing that all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses be contributed to the traffic education account; inserted (2) that read: "(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506"; and made minor changes in style. Amendment effective July 1, 1994.

**20-7-506. Annual allocation and distribution of traffic education account proceeds.** The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys must be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts must be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

**History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906; amd. Sec. 4, Ch. 39, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 39 deleted (2) that read: "(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:

(a) development, printing, and distribution of essential materials;

(b) preparation of teachers of traffic education;

(c) state supervision of the program; and

(d) any and all other activities deemed necessary by the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1994.

**20-7-507. District traffic education fund.** The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. All nontax receipts for traffic education must be deposited in the district's traffic education fund. The expenditure of the money deposited in the district's traffic education fund is not subject to the budgeting provisions of this title, and the money may be expended for traffic education.

**History: En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907; amd. Sec. 5, Ch. 39, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 39 at beginning of second sentence substituted "All nontax receipts" for "The state traffic education reimbursement and all nontax receipts"; and made minor changes in style. Amendment effective July 1, 1994.

**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district may authorize a levy of not

more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program that has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

**History: En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515; amd. Sec. 1, Ch. 215, L. 1981; amd. Sec. 9, Ch. 555, L. 1991; amd. Sec. 5, Ch. 568, L. 1991; amd. Sec. 5, Ch. 133, L. 1993; amd. Sec. 1, Ch. 34, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 34 in (3), in first sentence, substituted "may authorize a levy of not more than 2 mills on the district and" for "or of" and after "not more than" substituted "3 mills" for "2 mills". Amendment effective January 3, 1994.

*1993 Amendment:* Chapter 133 in (5), near end, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353, except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount received:

(a) in settlement of tax payments protested in a prior school fiscal year;

(b) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(c) in delinquent taxes from a prior school fiscal year.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

**History: En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924; amd. Sec. 20, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 767, L. 1991; amd. Secs. 2, 12, Ch. 6, Sp. L. July 1992; amd. Sec. 11, Ch. 633, L. 1993; amd. Sec. 1, Ch. 35, Sp. L. November 1993; amd. Sec. 4, Ch. 36, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendments:* Chapter 35 at end of (4), after "20-9-141(1)(b)", deleted "(iii)". Amendment effective July 1, 1994.

Chapter 36 in (5), after "less than", deleted "one or more of the following"; deleted former (5)(b) that read: "(b) any amount received as a general bonus payment under 20-6-401"; and made minor changes in style. Amendment effective July 1, 1994.

*Applicability:* Section 3, Ch. 35, Sp. L. November 1993, provided that this section applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

*1993 Amendment:* Chapter 633 in (1), in second sentence after "(5)", substituted "and (6)" for "through (7)"; in (3) substituted "BASE budget levy, the over-BASE budget levy, or the additional" for "permissive levy provided by 20-9-145 or to reduce the voted" and after "20-9-353" inserted exception clause; deleted former (5)(a) providing that limitation is not applicable to "any amount received under Public Law 81-874"; and deleted (7) that read: "(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401." Amendment effective July 1, 1993.

*Effective Date — Retroactive Applicability:* Section 59(2), Ch. 633, L. 1993, provided: "(2) [Section 11] [20-9-104] is effective July 1, 1993, and the provisions of [section 11(3)] [20-9-104(3)] relating to excess reserves and Public Law 81-874 money apply retroactively, within the meaning of 1-2-109, to district general fund reserves for the school fiscal year beginning July 1, 1992."

**20-9-122. Statement of district, city, and town valuations.** (1) By the second Monday of July, the department of revenue shall deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in the county the total assessed value and the total taxable value of all property in the districts, cities, or towns, as these valuations appear in the property tax record.

(2) In the case of a joint school district, the department of revenue shall, at the time of delivering the statement to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in the appropriate county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

**History: En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711; amd. Sec. 128, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near beginning after "revenue", substituted "shall deliver" for "or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also deliver" and at end substituted "property tax record" for "completed assessment book"; deleted former (2) that read: "(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk"; in (2), after "revenue", deleted "or its agent and the county clerk"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(C) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and

(iii) (A) pursuant to subsection (4), anticipated revenue from local government severance taxes as provided in 15-36-112; and

(B) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from local government severance taxes, as provided in 15-36-112, and from revenue from coal gross proceeds under 15-23-703.

**History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926; amd. Sec. 1, Ch. 699, L. 1983; amd. Sec. 1, Ch. 110, L. 1985; amd. Sec. 1, Ch. 265, L. 1985; amd. Sec. 12, Ch. 695, L. 1985; amd. Sec. 15, Ch. 611, L. 1987; amd. Sec. 19, Ch. 655, L. 1987; amd. Sec. 5, Ch. 35, L. 1989; amd. Secs. 21, 83, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 267, L. 1991; amd. Sec. 8, Ch. 767, L. 1991; amd. Sec. 6, Ch. 133, L. 1993; amd. Sec. 2, Ch. 325, L. 1993; amd. Sec. 14, Ch. 563, L. 1993; amd. Sec. 13, Ch. 633, L. 1993; amd. Sec. 16, Ch. 9, Sp. L. November 1993; amd. Sec. 2, Ch. 35, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendments:* Chapter 9 in (1)(b)(ii)(C), after "new production", inserted "production from horizontally completed wells, and incremental production". Amendment effective December 17, 1993.

Chapter 35 deleted former (1)(b)(ii)(D) and (1)(b)(ii)(E) that read: "(D) revenue from local government severance taxes as provided in 15-36-112;

(E) revenue from coal gross proceeds under 15-23-703"; inserted (1)(b)(iii) allowing school districts to use anticipated revenue from local government severance taxes and coal gross proceeds taxes to determine revenue available for property tax reduction in support of district general fund budgets; inserted (4) requiring the Department of Revenue to calculate and report anticipated local severance taxes and coal gross proceeds revenue to County Superintendents; and made minor changes in style. Amendment effective July 1, 1994.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*Applicability:* Section 3, Ch. 35, Sp. L. November 1993, provided that this section applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

*1993 Amendments:* Chapter 133 in (3), near middle, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 325 deleted former (1)(b)(iv) that read: "anticipated or reappropriated state impact aid received under the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 563 at end of (1)(b)(ii)(A) substituted "20-5-321 through 20-5-323" for "20-5-303, 20-5-307, 20-5-312, and 20-5-313".

Chapter 633 in (1)(a) substituted "sum of direct state aid and the special education allowable cost payment for the district" for "amount established by the schedules in 20-9-316 through 20-9-321"; in (1)(a)(i) substituted "BASE budget" for "foundation program"; in (1)(a)(ii) and (1)(c), before "general fund", deleted "additional"; in (1)(a)(ii), after "provisions of", substituted "20-9-308" for "20-9-145" and substituted "funding for a general fund budget that exceeds the maximum general fund budget" for "levies authorized by the electors of the district"; substituted (1)(b)(i) and (1)(b)(ii) concerning determining property tax reduction for former language that read: "(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104"; in (1)(b)(ii)(B), at beginning, deleted "anticipated or reappropriated"; in (1)(b)(ii)(C), (1)(b)(ii)(D), (1)(b)(ii)(E), and (1)(b)(ii)(G), at beginning, deleted "anticipated"; in (1)(b)(ii)(F), before "interest", deleted "anticipated interest to be earned or reappropriated"; in (1)(b)(ii)(H), after "revenue", deleted "anticipated by the trustees to be" and before "school" deleted "ensuing"; in (1)(c), after "district", substituted "up to the BASE budget amount" for "as the permissive amount under the provisions of 20-9-145" and before "levy" substituted "BASE budget" for "permissive net"; in (1)(d), after "met by", inserted "an over-BASE budget amount", before "20-9-353" inserted "any additional financing as provided in", and after "determine" substituted "any" for "the"; in (2), after "general fund", deleted "permissive net" and after "requirement" inserted "for any amount that does not exceed the BASE budget amount for the district"; in (3), before "general fund", deleted "general fund permissive net levy requirement and the additional" and after "general fund" inserted "net"; and made minor changes in style. Amendment effective July 1, 1993.

*Effective Date — Applicability:* Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $191,000 for each high school district;

(b) $17,190 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $17,190 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $191,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of $4,680 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,343 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $3,343 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $4,680 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

**History: En. Sec. 1, Ch. 633, L. 1993; amd. Sec. 1, Ch. 38, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 38 in (6)(a) and (6)(c)(ii) decreased entitlement from $200,000 to $191,000; in (6)(b) and (6)(c)(i) decreased entitlement from $18,000 to $17,190; in (10)(a) and (10)(c)(ii) decreased per-ANB entitlement from $4,900 to $4,680; and in (10)(b) and (10)(c)(i) decreased per-ANB entitlement from $3,500 to $3,343. Amendment effective January 4, 1994.

*Required General Fund Budget Reduction:* Section 3, Ch. 38, Sp. L. November 1993, provided: "Budget reduction — exceptions. (1) Except as provided in subsection (2), for calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994."

*Applicability:* Section 4, Ch. 38, Sp. L. November 1993, provided that this section applies to budgets for the school year beginning July 1, 1994.

*Effective Date:* Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

**20-9-308. BASE budgets and maximum general fund budgets.** (1) The trustees of a district shall adopt a general fund budget that:

(a) except as provided in subsection (2), is at least equal to the BASE budget established for the district; or

(b) except as provided in section 3, Chapter 38, Special Laws of November 1993, and subsection (4) of this section, does not exceed the maximum general fund budget established for the district.

(2) (a) If the BASE budget for a district for the school fiscal year is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:

(i) shall increase the general fund budget by at least:

(A) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;

(B) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;

(C) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or

(D) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997;

(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per-ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).

(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353.

(3) (a) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353, for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes.

(b) A general fund budget adopted under this subsection (3) may not exceed the greater of:

(i) 104% of the previous year's general fund budget as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993.

(4) (a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year.

(b) Except for the school fiscal year beginning July 1, 1994, the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(5) Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(6) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141.

[(7) For the purpose of this section, the general fund budget or general fund per-ANB budget for the school fiscal year ending June 30, 1993, is the general fund budget funded by any state, local, and federal revenue, excluding Public Law 81-874 receipts received in the school fiscal year ending June 30, 1993. Before excluding any Public Law 81-874 funding, a district may increase the district general fund budget for the school fiscal year ending June 30, 1993, by the allowable increases in subsections (2) and (3).]

**History: En. Sec. 3, Ch. 633, L. 1993; amd. Sec. 2, Ch. 38, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 38 in (1), at beginning, deleted "For the school fiscal year beginning on July 1, 1993"; in (1)(b) inserted reference to section 3, Chapter 38, Special Laws of November 1993; in (2)(a), after "the school fiscal year", deleted "beginning on July 1, 1993"; substituted (2)(a)(i) requiring that trustees increase the general fund budget to mandatory growth levels and (2)(a)(ii) and (2)(b) requiring voter approval for any portion of the general fund budget that exceeds the mandatory growth levels for former language that read: "(i) may increase the general fund budget for the district by 4% of the previous year's general fund budget or by 4% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; but

(ii) may not adopt a general fund budget that reflects less than the following general fund budget growth amounts for the appropriate school fiscal year"; deleted former (2)(a)(ii)(A) that read: "(A) 20% of the range between the district general fund budget for the school fiscal year ending June 30, 1993, and the BASE budget for the district for the school fiscal year beginning July 1, 1993"; deleted former (2)(b) and (2)(c) that read: "(b) (i) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (2)(a).

(ii) Except for the school fiscal year beginning July 1, 1993, whenever the trustees of a district adopt a general fund budget that exceeds one of the limitations in subsection (2)(a) but does not exceed the BASE budget for the district, the trustees shall submit a proposition on the amount that exceeds the limitation to the electors of the district, as provided in 20-9-353.

(c) Nothing in this section is intended to require a district to budget in excess of its BASE budget"; substituted (3) requiring voter approval for the over-BASE budget of a school district if the budget exceeds the previous year's general fund budget or the previous year's general fund budget per-ANB multiplied by the current year's ANB and providing that a general fund budget may not exceed the greater of 104% of the previous year's budget as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, or the previous year's budget per-ANB multiplied by the current year's ANB and as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, for former (3) that read: "(3) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall:

(a) adopt a resolution stating the reasons and purposes for exceeding the BASE budget amount if the general fund budget adopted under this subsection (3) does not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; or

(b) except for the school fiscal year beginning July 1, 1993, submit a proposition on any amount of the over-BASE budget that exceeds one of the limitations in subsection (3)(a) to the electors of the district, as provided in 20-9-353.

(c) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (3)(a)"; in (4)(a) inserted "as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993"; in (4)(b), after "beginning", deleted "July 1, 1993"; and made minor changes in style. Amendment effective January 4, 1994.

*Required General Fund Budget Reduction:* Section 3, Ch. 38, Sp. L. November 1993, provided: "Budget reduction — exceptions. (1) Except as provided in subsection (2), for calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994."

*Applicability:* Section 4, Ch. 38, Sp. L. November 1993, provided that this section applies to budgets for the school year beginning July 1, 1994.

*Effective Date:* Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

*Contingent Termination:* Section 64, Ch. 633, L. 1993, provided: "The bracketed language in [section 3] [20-9-308(7)], relating to excluding Public Law 81-874 receipts, is void on the date that the superintendent of public instruction certifies to the governor that, prior to January 1, 1995, a letter has been received from the United States department of education declaring that, after analysis of [this act], the bracketed language in [section 3] [20-9-308(7)] violates the provisions of the federal impact aid laws and will result in the loss of federal impact aid funds."

**20-9-331. Basic county tax and other revenues for county equalization of the elementary district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204.

**History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 413, L. 1983; amd. Sec. 1, Ch. 418, L. 1983; amd. Sec. 2, Ch. 699, L. 1983; amd. Sec. 1, Ch. 50, L. 1985; amd. Sec. 2, Ch. 265, L. 1985; amd. Sec. 1, Ch. 552, L. 1985; amd. Sec. 13, Ch. 695, L. 1985; amd. Sec. 15, Ch. 557, L. 1987; amd. Sec. 16, Ch. 611, L. 1987; amd. Sec. 20, Ch. 655, L. 1987; amd. Secs. 35, 84, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 267, L. 1991; amd. Sec. 4, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 17, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 in (2)(g), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*Name Change — Short Form Amendment:* Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

**20-9-333. Basic special levy and other revenues for county equalization of high school district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204.

**History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 418, L. 1983; amd. Sec. 3, Ch. 699, L. 1983; amd. Sec. 2, Ch. 50, L. 1985; amd. Sec. 3, Ch. 265, L. 1985; amd. Sec. 3, Ch. 299, L. 1985; amd. Sec. 2, Ch. 552, L. 1985; amd. Sec. 14, Ch. 695, L. 1985; amd. Sec. 17, Ch. 611, L. 1987; amd. Sec. 21, Ch. 655, L. 1987; amd. Secs. 36, 85, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 267, L. 1991; amd. Sec. 5, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 18, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 in (2)(d), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*Name Change — Short Form Amendment:* Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(j) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.

**History: En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021; amd. Sec. 6, Ch. 699, L. 1983; amd. Sec. 17, Ch. 695, L. 1985; amd. Sec. 20, Ch. 611, L. 1987; amd. Sec. 24, Ch. 655, L. 1987; amd. Sec. 7, Ch. 35, L. 1989; amd. Sec. 87, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 267, L. 1991; amd. Sec. 13, Ch. 711, L. 1991; amd. Sec. 45, Ch. 767, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. July 1992; amd. Sec. 12, Ch. 133, L. 1993; amd. Sec. 17, Ch. 563, L. 1993; amd. Sec. 19, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 9 in (3)(g), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

*1993 Amendments:* Chapter 133 in (5) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(e) requiring the addition of transportation costs to the schedule amount; inserted (3)(h) requiring the addition of transportation payments to the total amount available for the reduction of property tax; and made minor changes in style.

*Effective Date — Applicability:* Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

**32-1-467. Loans to managing officer.** (1) A bank may extend credit to a managing officer of the bank:

(a) in any amount to finance the education of the managing officer's children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer; or

(ii) expected to be owned by the managing officer after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate amount of loans to that individual under this subsection (1) does not exceed at any one time the greater of 2.5% of the bank's capital and unimpaired surplus or $25,000. However, in no event may the aggregate amount of loans to the individual exceed $100,000.

(2) The department may adopt rules to address loans made before October 1, 1993, and to define capital and unimpaired surplus for purposes of 32-1-465 and this section.

**History: En. Sec. 45, Ch. 89, L. 1927; re-en. Sec. 6014.49, R.C.M. 1935; R.C.M. 1947, 5-524; amd. Sec. 34, Ch. 395, L. 1993; amd. Sec. 1, Ch. 17, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 17 in four places, after references to managing officer, deleted references to director. Amendment effective December 23, 1993.

*1993 Amendment:* Chapter 395 substituted current text relating to loans to managing officer or director for former language that read: "No bank shall make a loan to any managing officer of such bank without taking good collateral or other ample and specific security therefor. When such loan or a loan made to a director of such bank, banking institution, or trust company exceeds in amount 10% of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a permanent record of such bank.”

**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

| | |
|---|---|
| (a) certificates of authority: | |
| (i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued: | |
| (A) domestic insurers | $ 600.00 |
| (B) foreign insurers | 600.00 |
| (ii) annual continuation of certificate of authority | 600.00 |
| (iii) reinstatement of certificate of authority | 25.00 |
| (iv) amendment of certificate of authority | 50.00 |
| (b) articles of incorporation: | |
| (i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state | 20.00 |
| (ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation | 25.00 |
| (c) filing bylaws or amendment to bylaws when required | 10.00 |
| (d) filing annual statement of insurer, other than as part of application for original certificate of authority | 25.00 |
| (e) insurance producer's license: | |
| (i) application for original license, including issuance of license, if issued | 15.00 |
| (ii) appointment of insurance producer, each insurer, electronically filed | 10.00 |
| (iii) appointment of insurance producer, each insurer, nonelectronically filed | 15.00 |
| (iv) temporary license | 15.00 |
| (v) amendment of license (excluding additions to license) or reissuance of master license | 15.00 |
| (vi) termination of insurance producer, each insurer, electronically filed | 10.00 |
| (vii) termination of insurance producer, each insurer, nonelectronically filed | 15.00 |
| (f) nonresident insurance producer's license: | |
| (i) application for original license, including issuance of license, if issued | 100.00 |

| | |
|---|---|
| (ii) appointment of insurance producer, each insurer, electronically filed | 10.00 |
| (iii) appointment of insurance producer, each insurer, nonelectronically filed | 15.00 |
| (iv) annual renewal of license | 10.00 |
| (v) amendment of license (excluding additions to license) or reissuance of master license | 15.00 |
| (vi) termination of insurance producer, each insurer, electronically filed | 10.00 |
| (vii) termination of insurance producer, each insurer, nonelectronically filed | 15.00 |
| (g) examination, if administered by the commissioner, for license as insurance producer, each examination | 15.00 |
| (h) surplus lines insurance producer license: | |
| (i) application for original license and for issuance of license, if issued | 50.00 |
| (ii) annual renewal of license | 50.00 |
| (i) adjuster's license: | |
| (i) application for original license and for issuance of license, if issued | 15.00 |
| (ii) annual renewal of license | 15.00 |
| (j) insurance vending machine license, each machine, each year | 10.00 |
| (k) commissioner's certificate under seal (except when on certificates of authority or licenses) | 10.00 |
| (l) copies of documents on file in the commissioner's office, per page | .50 |
| (m) policy forms: | |
| (i) filing each policy form | 25.00 |
| (ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks | 10.00 |
| (iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days | 100.00 |
| (n) applications for approval of prelicensing education courses: | |
| (i) reviewing initial application | 150.00 |
| (ii) periodic review | 50.00 |

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205.

(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

(4) (a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by the commissioner pursuant to Title 33

and the rules adopted under Title 33, except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

(b) The accreditation fee required by subsection (3) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

**History: En. Sec. 45, Ch. 286, L. 1959; amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, Ch. 334, L. 1973; amd. Sec. 1, Ch. 444, L. 1975; amd. Sec. 1, Ch. 322, L. 1977; R.C.M. 1947, 40-2726(1), (2); amd. Sec. 10, Ch. 198, L. 1979; amd. Sec. 1, Ch. 344, L. 1979; amd. Sec. 8, Ch. 303, L. 1981; amd. Sec. 1, Ch. 391, L. 1985; amd. Sec. 15, Ch. 249, L. 1987; amd. Sec. 1, Ch. 469, L. 1987; amd. Sec. 27, Ch. 537, L. 1987; amd. Sec. 6, Ch. 351, L. 1989; amd. Sec. 5, Ch. 509, L. 1989; amd. Sec. 14, Ch. 713, L. 1989; amd. Sec. 3, Ch. 798, L. 1991; amd. Sec. 9, Ch. 451, L. 1993; amd. Sec. 44, Ch. 596, L. 1993; amd. Sec. 7, Ch. 622, L. 1993; amd. Sec. 1, Ch. 6, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 6 in (1)(e)(ii) and (1)(f)(ii), after "insurer", inserted "electronically filed"; inserted (1)(e)(iii) establishing $15 fee for nonelectronically filed appointment of resident insurance producer; inserted (1)(e)(vi) and (1)(e)(vii) establishing fees for electronically and nonelectronically filed termination of resident insurance producer; inserted (1)(f)(iii) establishing $15 fee for nonelectronically filed appointment of nonresident insurance producer; inserted (1)(f)(vi) and (1)(f)(vii) establishing fees for electronically and nonelectronically filed termination of nonresident insurance producer; and made minor changes in style. Amendment effective July 1, 1994.

*1993 Amendments — Composite Section:* Chapter 451 in (1)(m)(ii), after "application", inserted "certificate, enrollment form"; and made minor changes in style.

Chapter 596 inserted (3) establishing an annual accreditation fee; at beginning of (4)(a) inserted exception clause; inserted (4)(b) providing for deposit and expenditure of the accreditation fee; and made minor changes in style.

Chapter 622 inserted (2) requiring Commissioner of Insurance to adopt fees implementing 33-17-1204 and 33-17-1205; in (4)(a), at end, inserted exception clause requiring fees implementing 33-17-1204 and 33-17-1205 to be deposited as required by 33-17-1207; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 596 and Ch. 622 made style changes that were slightly different. In each case, the codifier chose the more appropriate of the two.

**33-17-231. Appointment of insurance producers — continuation and termination.** (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer, and pay the fee as stated in 33-2-708. The appointment may be electronically filed pursuant to rules adopted by the commissioner.

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed

pursuant to rules adopted by the commissioner. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

**History: En. Sec. 161, Ch. 286, L. 1959; R.C.M. 1947, 40-3317; amd. Sec. 3, Ch. 344, L. 1979; amd. Sec. 7, Ch. 345, L. 1979; amd. Sec. 8, Ch. 409, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 20, Ch. 451, L. 1993; amd. Sec. 2, Ch. 6, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 6 in (1) inserted last sentence authorizing adoption of rules for electronic filing of insurance producer appointment; and in (2) inserted second sentence authorizing adoption of rules for electronic filing of written notice of earlier termination of insurance producer appointment. Amendment effective July 1, 1994.

*1993 Amendment:* Chapter 451 deleted former last sentence of (1) that read: "The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year"; at beginning of first sentence of (2) deleted "Subject to annual renewal by the insurer" and at end inserted "or the insurance producer" and inserted second sentence that read: "Termination of the insurer's authority in Montana also terminates the appointment"; deleted former (3) that read: "Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its insurance producers whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all insurance producers whose appointments in this state are not to remain in effect"; and made minor changes in style.

**33-17-236. Appointments of insurance producers by insurers.** (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department. The notice may be electronically filed pursuant to rules adopted by the commissioner.

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgment of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgment is received or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

**History: En. Sec. 5, Ch. 713, L. 1989; amd. Sec. 3, Ch. 6, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 6 in (1)(a) inserted last sentence authorizing adoption of rules for electronic filing of written notice of insurance producer appointment. Amendment effective July 1, 1994.

**33-17-237. Notification of violation or appointment termination.** (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department, which may include electronic filing.

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or 33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance department with a complete statement of all relevant facts and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

(5) Any information, documents, records, or other data provided pursuant to this section is privileged, and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith.

**History: En. Sec. 6, Ch. 713, L. 1989; amd. Sec. 21, Ch. 451, L. 1993; amd. Sec. 4, Ch. 6, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 6 at end of (1) inserted "which may include electronic filing". Amendment effective July 1, 1994.

*1993 Amendment:* Chapter 451 deleted second sentence of (1) that read: "If the reason of the termination is for any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7"; inserted (2) requiring notification of the Department upon termination; inserted (3) establishing a duty to notify the Department if a violation has occurred; and inserted (4) requiring that certain information regarding the alleged termination of violation be provided upon request.

**41-3-1004. Administration — training — oversight — procedures.** (1) Subject to the availability of funds, the youth court of a judicial district designated pursuant to 41-3-1002 shall:

(a) establish and approve policies and procedures that have the force of law for the operation of the local citizen review board;

(b) approve and provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

(d) employ staff and provide for support services for the local citizen review board.

(2) The office of the supreme court administrator shall, in accordance with the direction of the supreme court, oversee the program established in this part and, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of family services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of family services and other agencies.

(3) The youth court of a judicial district designated pursuant to 41-3-1002 shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen review board by the department of family services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of family services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of family services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law.

**History: En. Sec. 4, Ch. 610, L. 1993; amd. Sec. 1, Ch. 21, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 21 at beginning of (2) substituted "The office of the supreme court administrator shall, in accordance with the direction of the supreme court, oversee the program established in this part and" for "The youth court of a judicial district designated pursuant to 41-3-1002 shall". Amendment effective December 23, 1993.

**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

**History: En. Secs. 8, 17, Ch. 465, L. 1983; amd. Sec. 8, Ch. 15, L. 1985; amd. Sec. 1, Ch. 177, L. 1985; amd. Sec. 2, Ch. 531, L. 1985; amd. Sec. 47, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1989; amd. Sec. 1, Ch. 629, L. 1991; amd. Sec. 18, Ch. 799, L. 1991; amd. Sec. 1, Ch. 19, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 19 in (3), in last sentence, substituted "Payments under this subsection" for "However, payments for clothing" and after "exceed" substituted "appropriations for the purposes of this subsection" for "$300 a year per child"; and made minor changes in style. Amendment effective December 23, 1993.

**50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies.** (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation program of the department of justice.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 must be paid to the county treasurer for each permit. A copy of the permit must be furnished to the department of revenue. A permit may not be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation program of the department of justice. The state fire prevention and investigation program of the department of justice and county sheriffs are responsible for enforcing the provisions of this subsection.

**History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(1), (2); amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 129, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), in third sentence, substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**53-6-101.** *(Temporary)* **Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(6) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(7) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(8) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(9) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(10) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(11) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

**53-6-101.** *(Effective July 1, 1994)* **Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(6) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(7) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(8) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(9) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(10) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(11) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(12) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided.

**History: En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part); amd. Sec. 1, Ch. 77, L. 1985; amd. Sec. 1, Ch. 329, L. 1987; amd. Sec. 19, Ch. 97, L. 1989; amd. Sec. 1, Ch. 417, L. 1989; amd. Sec. 1, Ch. 633, L. 1989; amd. Sec. 10, Ch. 649, L. 1989; amd. Sec. 1, Ch. 711, L. 1989; amd. Sec. 1, Ch. 310, L. 1991; amd. Sec. 1, Ch. 388, L. 1991; amd. Secs. 3, 7, Ch. 460, L. 1991; amd. Sec. 4, Ch. 634, L. 1991; amd. Sec. 3, Ch. 663, L. 1991; amd. Sec. 3, Ch. 764, L. 1991; amd. Sec. 6, Ch. 590, L. 1993; amd. Sec. 2, Ch. 14, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 14 at end of (3)(n), after "mentally ill", deleted "but limited to services provided in crisis intervention programs"; inserted (4) allowing limitations on the scope and application of services to persons qualifying for Medicaid under the medically needy category of assistance; and made minor changes in style. Amendment effective December 23, 1993.

*1993 Amendment:* Chapter 590 inserted (11) concerning limit of Medicaid payments. Amendment effective July 1, 1994.

**53-6-103. Repealed.** Sec. 5, Ch. 31, Sp. L. November 1993.

**History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(3); amd. Sec. 2, Ch. 711, L. 1989.**

**53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.** (1) The department of social and rehabilitation services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) Nothing in this section may be construed to prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 and 53-6-113 through 53-6-116.

**History: En. Sec. 4, Ch. 325, L. 1967; R.C.M. 1947, 71-1514; amd. Sec. 1, Ch. 475, L. 1985; amd. Sec. 3, Ch. 711, L. 1989; amd. Sec. 1, Ch. 31, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* In (2), at end, substituted "53-6-116" for "53-6-115". Amendment effective January 1, 1994.

**53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of social and rehabilitation services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(5) Whenever the department of social and rehabilitation services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting.

**History: En. Sec. 8, Ch. 329, L. 1983; amd. Sec. 39, Ch. 112, L. 1991; amd. Sec. 35, Ch. 349, L. 1993; (5)En. Sec. 1, Ch. 14, Sp. L. November 1993.**

**Compiler's Comments**

*Effective Date:* Section 4, Ch. 14, Sp. L. November 1993, provided that subsection (5) of this section is effective December 23, 1993.

*1993 Amendment:* Chapter 349 at beginning of first sentence of (1) substituted "As a part of the information required in 17-7-111" for "At the commencement of each legislative session" and after "report" deleted "as provided in 5-11-210, to the legislature"; and made minor changes in style.

**53-6-116. Medicaid managed care — capitated health care.** (1) The department of social and rehabilitation services, in its discretion, may develop managed-care and capitated health care systems for medicaid recipients.

(2) The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient.

(3) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(4) The provision of medicaid services through managed-care and capitated health care systems is not subject to the limitations provided in 53-6-101 and 53-6-104.

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department of social and rehabilitation services.

**History: En. Sec. 1, Ch. 460, L. 1991; amd. Sec. 2, Ch. 31, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* In (1) and (4), after "managed-care", inserted "and capitated health care"; inserted (2) authorizing contract for health care services; in (4), after "53-6-101", deleted "53-6-103"; inserted (5) requiring submission to Legislative Finance Committee; and made minor changes in style. Amendment effective January 1, 1994.

**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(6) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(7) A person described in subsection (6) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

**History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973; amd. Sec. 38, Ch. 37, L. 1977; R.C.M. 1947, 71-1516; amd. Sec. 1, Ch. 399, L. 1981; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 1, Ch. 310, L. 1989; amd. Sec. 11, Ch. 649, L. 1989; amd. Sec. 2, Ch. 388, L. 1991; amd. Sec. 5, Ch. 634, L. 1991; amd. Sec. 1, Ch. 230, L. 1993; amd. Sec. 3, Ch. 14, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 14 in introductory clause of (1), after "services", inserted "in its discretion"; inserted (2) allowing the Department to establish income and resource limitations; in introductory clause of (3), after "shall pay", substituted "as required by federal law" for "for", after "necessary for" substituted "medicaid-eligible persons participating" for "participation", before "deductibles" inserted "premiums", and before "medicare-eligible" inserted "qualified"; adjusted subsection references; and made minor changes in style. Amendment effective December 23, 1993.

*1993 Amendment:* Chapter 230 in (1)(f)(ii)(A), at end, inserted the alternative of having paid the Department the amount by which income exceeds the income level for federally aided assistance categories; in (5), at end, inserted provision concerning family resources not in excess of reasonable standards established by the Department; and made minor changes in style. Effective July 1, 1993.

**53-9-109. Crime victims compensation account.** (1) There is a crime victims compensation and assistance account in the state special revenue fund. There must be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. Except as provided in subsections (2) and (3), the money in the account must be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division.

(2) The fund balance in the account as of March 31 of each year is limited to $500,000. Whenever the fund balance on March 31 exceeds $500,000, the amount of the fund balance in excess of $500,000 must be deposited in the general fund.

(3) On or before March 31, 1994, the division shall transfer $250,000 or the fund balance in excess of $500,000, whichever is greater, from the crime victims compensation and assistance account to the general fund.

**History: En. 71-2624 by Sec. 25, Ch. 527, L. 1977; R.C.M. 1947, 71-2624; amd. Sec. 3, Ch. 367, L. 1979; amd. Sec. 97, Ch. 421, L. 1979; amd. Sec. 1, Ch. 567, L. 1981; amd. Sec. 27, Ch. 281, L. 1983; amd. Sec. 37, Ch. 557, L. 1987; amd. Sec. 4, Ch. 68, L. 1989; amd. Sec. 3, Ch. 354, L. 1991; amd. Sec. 1, Ch. 19, Sp. L. January 1992; amd. Sec. 4, Ch. 11, Sp. L. July 1992; amd. Sec. 1, Ch. 3, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 3 in (1), at beginning of last sentence, inserted exception clause; substituted (2) limiting the fund balance to $500,000 as of each March 31 and providing that the excess on that date be deposited in the general fund for provision transferring entire fund balance to general fund at end of a fiscal year; and inserted (3) providing that on or before March 31, 1994, $250,000 or the balance in excess of $500,000, whichever is greater, be transferred to the general fund. Amendment effective December 16, 1993.

*Contingent Termination:* Section 3, Ch. 3, Sp. L. November 1993, provided that the amendment by Ch. 3 terminates if and on the date that the Secretary of State receives a certification from the Governor that federal crime victims compensation funds will not be awarded.

**60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision:

(a) 9/10 of 1% of all money must be deposited in the state park account;

(b) 23/64 of 1% of all money must be deposited in a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money must be deposited in the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the highways in this state selected and designated by the commission;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety, and 10% of the amount deposited in the snowmobile account must be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 23/64 of 1% is used for propelling snowmobiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state.

**History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974; amd. Sec. 8, Ch. 477, L. 1975; amd. Sec. 1, Ch. 372, and Sec. 1, Ch. 382, L. 1977; R.C.M. 1947, 32-2601; amd. Sec. 10, Ch. 23, L. 1979; amd. Sec. 1, Ch. 607, L. 1979; amd. Sec. 26, Ch. 298, L. 1983; amd. Sec. 1, Ch. 558, L. 1985; amd. Sec. 10, Ch. 512, L. 1991; amd. Sec. 1, Ch. 698, L. 1991; amd. Sec. 11, Ch. 87, L. 1993; amd. Sec. 1, Ch. 40, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 40 in (1)(b) and (5) reduced amount designated for snowmobile account from 1/2 of 1% to 23/64 of 1%. Amendment effective July 1, 1994.

*1993 Amendment:* Chapter 87 in (1)(e)(i), before "highways", deleted "federal-aid" and after "designated" substituted "by the commission" for "under Title 23, U.S.C., on highways leading from each county seat in the state to the federal highway system of federal-aid roads if the county seat is not on the system, and on the other roads that have been or may be authorized by the laws of Montana"; and in (2), near middle of first sentence after "expended", deleted "through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state" and at end substituted "this title" for "60-3-204 through 60-3-206".

**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit the fees collected under subsection (1) in the general fund. One-half of the fees must be appropriated and used for funding county drinking and driving prevention programs as provided in 61-2-108. For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department to purchase and maintain equipment used to analyze breath for the presence of alcohol.

(b) On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account.

**History: En. Sec. 2, Ch. 643, L. 1987; amd. Sec. 1, Ch. 55, L. 1989; amd. Sec. 1, Ch. 751, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. January 1992; amd. Sec. 1, Ch. 492, L. 1993; amd. Sec. 1, Ch. 2, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 2 in (2)(a), in first sentence after "shall deposit", deleted "one-half of"; in (2)(b) substituted requirement that the Department transfer to the general fund the balance of the reinstatement fee account on or before June 30, 1994, for provision providing that one-half of the fees collected under subsection (1) be distributed to the counties that they were collected in to be distributed to cities and towns in the county on a pro rata population basis to be used in programs addressing the problems of minors and of adult chemical dependency and for local law enforcement training and equipment; and made minor changes in style. Amendment effective December 16, 1993.

*1993 Amendment:* Chapter 492 in (2)(a), near middle of first sentence before "used", inserted "appropriated and" and inserted second sentence statutorily appropriating up to $50,000 for each fiscal year from fees remaining in general fund after program appropriations to be used by Department to purchase and maintain equipment to analyze breath for presence of alcohol. Amendment effective July 1, 1993.

**61-3-207. Mobile home or housetrailer — transfer of interest.** (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer must be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer.

(2) When a mobile home or housetrailer is sold under contract or under such conditions that title is not immediately conveyed, the parties to the

transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is responsible for payment of taxes upon the mobile home or housetrailer after the transfer. The clerk and recorder shall immediately notify the department of revenue of the information in the notice. The penalty provisions of 61-3-201(2) do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer.

**History: En. Sec. 1, Ch. 555, L. 1985; amd. Sec. 130, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), in third sentence, substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**61-3-303. Application for registration.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file or cause to be filed in the office of the county treasurer where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application must contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, and type of body and, if a truck, rated capacity; and

(d) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department of revenue may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department of revenue may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department of revenue.

**History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(1), (3); amd. Sec. 4, Ch. 502, L. 1979; amd. Sec. 7, Ch. 712, L. 1979; amd. Sec. 23, Ch. 614, L. 1981; amd. Sec. 1, Ch. 433, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 516, L. 1985; amd. Sec. 4, Ch. 421, L. 1987; amd. Sec. 21, Ch. 611, L. 1987; amd. Sec. 6, Ch. 724, L. 1991; amd. Sec. 131, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (3) and in two places in (4) substituted "of revenue" for "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**61-3-345. County motor vehicle computer system.** (1) The department shall maintain a statewide online computer system to be used to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of administration, data processing division, selected by the division administrator;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) an employee of the department of revenue who is engaged in property assessment, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general.

**History: En. Sec. 12, Ch. 604, L. 1991; amd. Sec. 132, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2)(d) substituted "an employee of the department of revenue who is engaged in property assessment" for "a county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**61-3-503. Assessment.** (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the department of revenue. The department of revenue shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the department of revenue, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles must be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage is 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value must remain at that minimum as long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value must remain at that amount as long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1).

**History: Ap. p. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; Ap. p. Sec. 9, Ch. 74, L. 1975; Sec. 53-162, R.C.M. 1947; R.C.M. 1947, 53-114(2), (5), 53-162; amd. Sec. 39, Ch. 421, L. 1979; amd. Sec. 14, Ch. 712, L. 1979; amd. Sec. 2, Ch. 262, L. 1981; amd. Sec. 31, Ch. 614, L. 1981; amd. Sec. 23, Ch. 516, L. 1985; amd. Sec. 26, Ch. 611, L. 1987; amd. Sec. 1, Ch. 349, L. 1989; amd. Sec. 5, Ch. 525, L. 1989; amd. Sec. 1, Ch. 8, Sp. L. June 1989; amd. Sec. 7, Ch. 604, L. 1991; amd. Sec. 133, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1)(a), in two places, and in (1)(c) substituted "department of revenue" for "county assessor"; in (1)(e), after "revenue", deleted "or its agent"; in (1)(g) substituted "of revenue" for "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*Repeal of Termination Date:* Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated the 1989 amendments to this section effective December 31, 1993. Repealer effective February 18, 1993.

**61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements — notice of expiration.** (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's signature in pen and ink immediately upon receipt of the license. A license is not valid until it is signed by the licensee.

(2) (a) The department shall, when any person applies in person for renewal of a driver's license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate the applicant's physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 3 months of the expiration of the person's license.

(d) The department shall mail a driver's license renewal notice to a person no earlier than 60 days and no later than 30 days prior to the expiration date of the person's license.

(e) (i) A person may renew a driver's license by mail, without the tests provided for in subsection (2)(a), for a 4-year period, provided that the person:

(A) has not accumulated five or more points on the person's driving record for the 4 years immediately preceding the expiration date; and

(B) submits a sworn affidavit on a form prescribed by the department, attesting to the person's physical and mental ability to safely operate a motor vehicle.

(ii) The department may not renew a driver's license by mail for more than one renewal period. At the expiration of the mail renewal period, a person shall apply in person for a renewal.

(iii) A person who holds a probationary or restricted license may not renew the license by mail.

(3) A license expires on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving. Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana.

(6) It is unlawful for any person to have in the person's possession or under the person's control more than one Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle until the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

(7) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 per year or fraction of a year;

(b) motorcycle endorsement — 50 cents per year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 per year or fraction of a year;

(ii) intrastate — $3.50 per year or fraction of a year.

(8) The holder of a chauffeur's license may convert the chauffeur's license to a commercial driver's license by paying the appropriate fee covering the remainder of the life of the license and complying with the requirements established by the department.

(9) The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial driver's license may do so upon paying the appropriate fees and complying with the requirements established by the department.

(10) A person may not renew a driver's license by mail until the person has received a digital license issued by the department. As used in this subsection, the term "digital license" means a license having a computer-imaged photograph and signature.

**History: (1) thru (6)En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975; Sec. 31-135, R.C.M. 1947; (7)En. Sec. 13, Ch. 199, L. 1943; Sec. 31-113, R.C.M. 1947; R.C.M. 1947, 31-113, 31-135(part); amd. Sec. 1, Ch. 361, L. 1979; amd. Sec. 55, Ch. 421, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1985; amd. Sec. 1, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 516, L. 1985; amd. Sec. 12, Ch. 443, L. 1987; amd. Sec. 10, Ch. 378, L. 1989; amd. Sec. 1, Ch. 726, L. 1991; amd. Sec. 10, Ch. 195, L. 1993; amd. Sec. 1, Ch. 26, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 26 in (2)(a), near beginning after "applies", inserted "in person"; inserted (2)(d) relating to renewal notice; inserted (2)(e) relating to renewal by mail; deleted former (8) that read: "(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial driver's license until the expiration of the license"; and inserted (10) relating to digital licenses. Amendment effective July 1, 1994.

*1993 Amendment:* Chapter 195 throughout section substituted references to commercial driver's license for references to commercial vehicle operator's endorsement; in

(7)(a) inserted exception clause; and made minor changes in style.

**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial driver's licenses provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of 8.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 62.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a) and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

**History: En. Sec. 3, Ch. 277, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 115, Ch. 370, L. 1987; amd. Sec. 18, Ch. 443, L. 1987; amd. Sec. 4, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 275, L. 1989; amd. Sec. 12, Ch. 398, L. 1989; amd. Sec. 2, Ch. 584, L. 1991; amd. Sec. 9, Ch. 701, L. 1991; amd. Sec. 2, Ch. 726, L. 1991; amd. Secs. 3, 5, Ch. 5, Sp. L. January 1992; amd. Sec. 5, Ch. 11, Sp. L. July 1992; amd. Sec. 13, Ch. 195, L. 1993; amd. Sec. 2, Ch. 39, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 39 in (1)(d) decreased amount to traffic education account from 17.5% to 8.75%; in (1)(e) increased amount to general fund from 53.75% to 62.5%; and in second sentence of (2)(a) and in first sentence of (2)(b), before "and the state general fund", deleted "the state traffic education account". Amendment effective July 1, 1994.

*1993 Amendment:* Chapter 195 throughout section substituted references to commercial driver's license for references to commercial vehicle operator's endorsement; in (1)(a) deleted last sentence statutorily appropriating funds from the account to the pension trust fund; and made minor changes in style.

**61-12-206. Offenses for which arrest authorized.** (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;

(b) part 3, chapter 4, of this title;

(c) sections 15-24-201 through 15-24-205;

(d) Title 15, chapter 70, parts 2 and 3;

(e) sections 15-71-101 through 15-71-105;

(f) section 61-3-502(1);

(g) sections 61-10-201, 61-10-203, 61-10-206, 61-10-209, and 61-10-211 through 61-10-215;

(h) sections 61-10-222 through 61-10-224;

(i) sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section.

**History: En. Sec. 8, Ch. 242, L. 1971; amd. Sec. 49, Ch. 316, L. 1974; R.C.M. 1947, 32-1639; amd. Sec. 5, Ch. 39, L. 1981; amd. Sec. 1, Ch. 100, L. 1991; amd. Sec. 20, Ch. 575, L. 1993; amd. Sec. 19, Ch. 10, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 10 substituted (1)(d) referring to Title 15, chapter 70, parts 2 and 3, for former (1)(d) referring to 15-70-302 through 15-70-307; and deleted former (1)(e) referring to 15-70-311 through 15-70-314. Amendment effective January 1, 1994.

*1993 Amendment:* Chapter 575 in (1)(h) inserted references to 61-10-203, 61-10-206, 61-10-209, and 61-10-211. Amendment effective January 1, 1993.

**61-12-402. Notice to owner.** (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition, the Montana highway patrol shall furnish the sheriff a complete description of the vehicle, including year, make, model, serial number, and license number if available; any costs incurred to that date in the removal, storage, and custody of the vehicle; and any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice is considered to have been given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(4) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned is sufficient to meet all requirements of notice pursuant to this part. The notice by publication can contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff or the city police. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section must be transmitted to the motor vehicle wrecking facility and must be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period.

**History: En. Sec. 3, Ch. 288, L. 1967; amd. Sec. 1, Ch. 53, L. 1974; R.C.M. 1947, 53-903; amd. Sec. 1, Ch. 191, L. 1979; amd. Sec. 1, Ch. 355, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 88, L. 1987; amd. Sec. 134, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (6), in first sentence after "determined by the", deleted "county assessor in accordance with the rules of the"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**70-23-304. Declaration to be approved by department of revenue before recording.** Before a declaration may be recorded in the county in which the property is located, it must be approved by the department of revenue. A declaration must be approved unless:

(1) the name is proper so as to comply with 70-23-303; and

(2) all taxes and assessments due and payable have been paid.

**History: En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 40, Ch. 391, L. 1973; R.C.M. 1947, 67-2317; amd. Sec. 135, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in introductory clause, before "the department of revenue", deleted "the agent of"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**70-23-305. Recording of declaration.** (1) When a declaration is made and approved as required, it must, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date of recording must be entered on the declaration.

(2) At the time of recording a declaration, the person offering it for record shall also file a copy, certified by the recording officer to be a true copy, with the department of revenue.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording.

**History: En. Sec. 18, Ch. 120, L. 1965; amd. Sec. 41, Ch. 391, L. 1973; R.C.M. 1947, 67-2318; amd. Sec. 1, Ch. 85, L. 1991; amd. Sec. 136, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), at end, deleted "or its agent in the county in which the property is located". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**75-10-621. Hazardous waste/CERCLA special revenue account.** (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

**History: En. Sec. 2, Ch. 408, L. 1987; amd. Sec. 15, Ch. 787, L. 1991; amd. Sec. 2, Ch. 16, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 16 in (3)(b)(iii), after "expenses of the", deleted "administration of the environmental sciences division of the"; and made minor changes in style. Amendment effective December 23, 1993.

**76-2-102. Organization and operation of commission.** (1) The commission is to consist of the three county commissioners, the county surveyor, and a county official appointed by the county commissioners. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board must be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within the district.

**History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in first sentence, substituted "a county official appointed by the county commissioners" for "the county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**76-13-207. Determination and collection of costs of fire protection.** (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 76-13-201, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the department of revenue the names of these owners of forest lands in each county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected.

**History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 643, L. 1985; amd. Sec. 138, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2) and (3) substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**76-15-518. Certification of assessment to department of revenue — entry on property tax record.** The board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in this part or part 6. The assessment must be certified to the department of revenue and entered on the property tax record of each county.

**History: En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211; amd. Sec. 139, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in second sentence substituted "department of revenue" for "county assessor of each of the respective counties" and "property tax record of each county" for "assessment roll";

and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**77-1-501. List of state lands by county.** The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue that designates each county in which the state has real property in excess of 6% of the total land area of the county and from which the state derives grazing, agricultural, or forest income. The statement must contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

**History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1115; amd. Sec. 140, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 after "department of revenue" substituted "that designates" for "or its agent in"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**77-1-503. Form to be completed by department of revenue.** The department shall provide a form for each county to be followed and completed by the department of revenue. The department of revenue shall, before October 1, make the computations required and submit to the department the completed forms, which must show the computations and method used in arriving at the state land equalization payment.

**History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1117; amd. Sec. 141, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, after "completed by", deleted "the agent of"; in second sentence substituted "department of revenue" for "agent"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**77-1-504. Processing of statements.** The department shall examine for accuracy the statement returned by the department of revenue, and the state land equalization payment may not be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties that are eligible for state land equalization payments, and this claim must show the amount of money each eligible county will receive.

**History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118; amd. Sec. 142, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, after "returned by the", deleted "agent of the"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**77-2-313. Land subject to taxation.** (1) State lands purchased from the state are subject to taxation. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within an irrigation district is liable for the entire irrigation district tax levied against the land.

(2) The improvements on the land must be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue with a complete list of all state lands sold in each county during the previous calendar year. This list must show the name and address of the purchaser, the legal description of the land, and the acreage contained in the purchase.

**History: En. Sec. 92, Ch. 60, L. 1927; re-en. Sec. 1805.92, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975; R.C.M. 1947, 81-928; amd. Sec. 143, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence, at end, deleted "to the full value thereof"; in first sentence of (3), after "revenue", deleted "or its agent in each county"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**80-2-203. Participation in program — tax.** (1) A taxpayer or an association of taxpayers engaged in the growing of crops other than those specified in this part or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable levies may be imposed as agreed upon by the board and the taxpayers. The taxpayers are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each farmer taxpayer who signifies a desire to become subject to the provisions of this part shall file with the department of revenue the properly filled out form not later than August 15. The taxpayer is chargeable with the tax provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. the day immediately following the acceptance of the application by the department of revenue.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail tax provided in this part.

**History: (1)En. Sec. 11, Ch. 169, L. 1917; re-en. Sec. 362, R.C.M. 1921; re-en. Sec. 362, R.C.M. 1935; Sec. 82-1518, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; R.C.M. 1947, 82-1501(3), 82-1518; amd. Sec. 33, Ch. 451, L. 1993; amd. Sec. 144, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), in two places, substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 451 in second sentence of (2) substituted "12:01 a.m." for "noon" and after "day" inserted "immediately";

and made minor changes in style. Amendment effective April 21, 1993.

**80-2-204. Duty of department of revenue — election of benefits of law.** The department of revenue shall upon request explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail the provisions of this part. The department of revenue shall issue hail insurance policies to each taxpayer who desires to become subject to this part, to become liable for the tax levies provided in this part, and to be eligible for the benefits and protection of this part. A taxpayer who elects to become subject to this part is liable for the taxes levied for hail insurance and shall participate in the benefits and protection afforded by this part. Either the owners of lands worked by others under lease or contract may make the election for hail insurance or the lessee of the land may tender payment of the tax levied for hail insurance to protect the lessee's crops, in cash, to the officer authorized to receive payment.

**History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R.C.M. 1921; re-en. Sec. 356, R.C.M. 1935; amd. Sec. 60, Ch. 391, L. 1973; R.C.M. 1947, 82-1512; amd. Sec. 5, Ch. 691, L. 1983; amd. Sec. 145, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at beginning of first sentence substituted "The department of revenue shall" for "It shall be the duty of the agent of the department of revenue in each county in the state"; in second sentence, after "policies", deleted "on forms provided for such purpose"; in fourth sentence substituted "may make the election" for "shall elect if such lands shall be subject to the tax levies herein provided for and the crops grown thereon protected" and at end deleted "whereupon such crops shall become eligible to the benefits and protection afforded by this part for hail insurance"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**80-2-206. Cash payment.** When an applicant for hail insurance tenders cash for the insurance to the department of revenue, the applicant is allowed a discount of 4%. The hail insurance must be issued upon the cash payment less the 4%. The charge for the insurance must be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later, the board of hail insurance shall arrange for the proper refund to the insured. All cash received by the department of revenue must be promptly turned over to the county treasurer, who shall furnish the insured with a current receipt and place the money in the hail insurance fund.

**History: En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; R.C.M. 1947, 82-1503(2); amd. Sec. 146, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence substituted "department of revenue" for "county assessor"; in last sentence substituted "department of revenue" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**80-2-207. Delinquent taxes — application by delinquent — crop lien.** (1) An owner of land who has more than 1 year's delinquent taxes on the land may not be allowed hail insurance under the provisions of this part, unless the owner's application is accompanied by a cash payment for the amount that would be due on the application in the event of a maximum levy for that year.

(2) Any grain grower unable to secure state hail insurance under the provisions of this part because of delinquent taxes or for other reasons may make application to the department of revenue, and the department of revenue may receive and accept the applications when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules and requirements that may be prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules and requirements. Upon receipt of the application, the department of revenue shall make a record of the application and shall file the original in the office of the clerk and recorder of the county. The department of revenue shall also cause an assessment for the proper amount to be made on the property tax record in the same manner provided for in the case of other special levies or assessments.

(3) A tenant who has delinquent hail insurance that was secured by a crop lien only and not secured by real estate may not be allowed another policy in any succeeding year until the delinquent account or accounts are paid or until the tenant pays cash for the current hail insurance.

(4) If a tenant becomes delinquent for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction. If the reasons for requesting a reduction are approved by the board, the board may reduce the charge to not less than one-half the original amount charged.

**History: (1) thru (3)En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; Sec. 82-1503, R.C.M. 1947; (4)En. Sec. 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; R.C.M. 1947, 82-1503(1), (3), 82-1509(part); amd. Sec. 147, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (2), in four places, substituted references to Department of Revenue for references to county assessor; in last sentence of (2) substituted "property tax record" for "assessment rolls"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**80-2-225. Real estate lien — creation.** The tax levies are chargeable to the lands of each taxpayer who elects to become subject to this part and must be entered in the property tax record and collected by the officers charged with such duties in the manner and form as are other property taxes. If the levies are not paid, they are a lien on the lands against which they are levied in the same manner as are other property taxes.

**History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part); amd. Sec. 148, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence substituted "property tax record" for "tax roll"; deleted last two sentences that read: "The lien may in no way affect mortgages that are of record on March 14, 1917. The lien of any mortgage filed subsequent to March 14, 1917, shall be subsequent to any lien for hail insurance hereafter levied thereon"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**81-2-302. Duty of department of revenue.** The property tax record of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The department of revenue shall certify to the department when the necessary 75% of the owners of livestock representing not less than 50% of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition.

**History: En. Sec. 2, Ch. 94, L. 1943; amd. Sec. 60, Ch. 310, L. 1974; R.C.M. 1947, 46-213; amd. Sec. 149, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence substituted "property tax record" for "assessment roll"; and in second sentence substituted "department of revenue" for "county assessor". Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**81-4-511. Assessment of horses taken in roundup.** Following a roundup held pursuant to this part, the department of revenue shall immediately assess all horses that have been taken up in a roundup and that may be sold or reclaimed before sale and not already assessed for the current year. The department of revenue shall transmit to the county treasurer a copy of each assessment made. Any horses that have escaped the assessment mentioned in 81-4-501 must be assessed as provided for in 15-8-306.

**History: En. Sec. 9, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.9, R.C.M 1935; R.C.M. 1947, 46-1809; amd. Sec. 150, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 at beginning substituted "Following a roundup held pursuant to this part, the department of revenue shall" for "It shall be the duty of the county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**81-4-513. Report of roundup foreman — disposition of copies.** The roundup foreman in charge of the roundup shall keep an accurate record of all proceedings under the order for the roundup. Within 30 days after the roundup is completed, the foreman shall prepare in triplicate and verify by oath a full, true, and accurate report of all the proceedings under the order for the roundup. The report must include a complete financial statement, the number and description of horses impounded, and the manner of disposition of the horses. One copy of the report must be filed with the clerk of the board of county commissioners, and the filing is notice of the contents of the report and prima facie proof of the facts stated in the report. One copy of the report must be filed with the department of revenue, and one copy must be filed with the county treasurer, for their information and appropriate action.

**History: En. Sec. 11, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.11, R.C.M. 1935; R.C.M. 1947, 46-1811; amd. Sec. 151, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in last sentence substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**81-4-516. Limitation of powers or duties of officers.** Except as provided in this part, this part may not be construed as limiting the powers or duties of the department of revenue, county treasurers, or other boards or officers.

**History: En. Sec. 14, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1814; amd. Sec. 152, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 near end substituted "the department of revenue" for "assessors"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**81-7-303. County commissioners permitted to require per capita license fee on sheep.** (1) To defray the expense of protection, the board of county commissioners of any county may require all owners or persons in possession of any sheep 1 year old or older in the county on the regular assessment date of each year to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of any sheep 1 year old or older coming into the county after the regular assessment date and subject to taxation under the provisions of 15-24-301 are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the property tax record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only.

**History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part); amd. Sec. 1, Ch. 9, L. 1981; amd. Sec. 153, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), at end of first sentence, deleted "for sheep so owned or possessed by him in the county"; in (2), in first sentence, substituted "tax record" for "tax rolls" and "department of revenue" for "county assessor"; in (3), after "placed", deleted "by the treasurer"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**82-11-118. Fees for processing applications.** (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-23-601 or 15-36-101. The fee must be paid by the owner or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application.

**History: En. Sec. 20, Ch. 9, Sp. L. November 1993.**

**Compiler's Comments**

*Report Required:* Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

*Effective Date — Applicability:* Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

**82-11-119 and 82-11-120 reserved.**

**85-7-2136. Collection of taxes or assessment.** (1) On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In

case of any payment pursuant to this subsection, a separate tax receipt must issue, showing exactly what assessments have been paid, and must show that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is paid as permitted in this section and the receipt for the payment presented to the county treasurer at the time the taxes are paid, or paid at the same time.

**History: (1)En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R.C.M. 1921; re-en. Sec. 7240, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973; Sec. 89-1812, R.C.M. 1947 (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-1812; amd. Sec. 4, Ch. 584, L. 1989; amd. Sec. 1, Ch. 485, L. 1993; amd. Sec. 154, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in first sentence of (1), after "furnish", deleted "the agent of" and after "revenue" deleted "in each county in which any of the lands of the district are situated" and in second sentence, before "department", deleted "agent of the", after "revenue" deleted "in each county", after "list" deleted "and prior to the delivery of the assessment book to the county treasurer", and near end substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

*1993 Amendment:* Chapter 485 inserted (3) requiring County Treasurer during water delivery season to make available to commissioners of irrigation district notice of receipt of payments of district assessments by 9 a.m. of day following receipt of payment; and made minor changes in style.

**85-8-601. Certification and collection of district taxes.** (1) On or before the third Monday in August of each year, the commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other

tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid.

**History: (1)En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R.C.M. 1921; re-en. Sec. 7329, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973; Sec. 89-2401, R.C.M. 1947; (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-2401; amd. Sec. 155, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), near beginning of first sentence after "certify to", deleted "the agent of" and after "revenue" deleted "in each county wherein the lands of the district are situate" and in second sentence, before "department", deleted "agent of the", after "revenue" deleted "in each county", and after "assessment roll" substituted "in the property tax record of the county for each year" for "to be entered in the assessment book of said county for each year and prior to the delivery of the assessment book to the county treasurer"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**85-9-603. Directors to provide financial information.** (1) Before the second Monday in July of each year, the directors shall provide the department of revenue and the county treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts; and

(c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to the department of revenue and each of the affected county treasurers.

**History: En. Sec. 18, Ch. 100, L. 1969; R.C.M. 1947, 89-3418; amd. Sec. 156, Ch. 27, Sp. L. November 1993.**

**Compiler's Comments**

*1993 Special Session Amendment:* Chapter 27 in (1), in introductory clause, substituted "department of revenue" for "county assessor" and before "treasurer" inserted "county"; in (2) substituted "department of revenue and each of the affected county treasurers" for "each of the county assessors and treasurers"; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

**85-20-302. Consent to federal act and modification of compact.** (1) Pursuant to Article V, section A.1., of the Northern Cheyenne-Montana Compact, section 85-20-301, MCA, the Legislature hereby gives its consent to, ratifies, and adopts the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186). This consent includes:

(a) any amendment to the act that clarifies that environmental compliance costs for the Tongue River Dam Project are the responsibility of the federal government; or

(b) any amendment to section 4(c) of the act that provides that, except for the authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and 7(e), the authorization of appropriations in the act are not effective until such time as the Montana water court enters and approves a decree as provided in subsection 4(d) of the act.

(2) The provisions of the compact that are inconsistent with the federal act or with the amendments specified in subsections (1)(a) and (1)(b) of this section shall be deemed to be modified to the extent necessary to conform therewith.

**History: En. Sec. 1, Ch. 7, Sp. L. November 1993.**

**Compiler's Comments**

*Effective Date:* Section 3, Ch. 7, Sp. L. November 1993, provided: "[This act] is effective on passage and approval." Approved December 17, 1993.

## Part 9

## Clean Coal Technology Program (Repealed. Sec. 2, Ch. 33, Sp. L. November 1993)

**Part Compiler's Comments**

*Histories of Repealed Sections:*

**90-4-901.** En. Sec. 4, Ch. 722, L. 1991.
**90-4-902.** En. Sec. 5, Ch. 722, L. 1991.
**90-4-903.** En. Sec. 6, Ch. 722, L. 1991.
**90-4-904.** En. Sec. 7, Ch. 722, L. 1991.
**90-4-905.** En. Sec. 8, Ch. 722, L. 1991.
**90-4-906.** En. Sec. 9, Ch. 722, L. 1991.

# MISCELLANEOUS CODE REVISIONS

This portion includes the following sections:

3-1-805
15-6-133
13-37-218
15-7-202
15-30-101
15-30-103
15-30-105
15-30-111
15-30-112
15-30-117
15-30-121
15-30-122
15-30-126
15-30-131
15-30-137
15-30-142
15-30-156
15-30-157
15-30-159
15-30-160
15-30-170
15-30-199
15-30-323
15-31-121
15-31-131
15-31-202
15-31-204
15-32-303
19-3-108
85-2-706
85-2-707
85-20-401
85-20-402

## The following MCA sections were affected by referendum, court rule, technical corrections, or rearrangement since the 1993 printing of the MCA:

**3-1-805. Disqualification for cause.**

DISQUALIFICATION FOR CAUSE

This section is limited in its application to judges presiding in district courts, justice of the peace courts, municipal courts, small claims courts, and city courts.

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court, whereupon the Chief Justice shall assign a district judge to hear the matter. If the affidavit is filed against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case made by the challenged judge and from which an appeal could have been taken.

(c) Any affidavit which is not in proper form and which does not allege facts showing personal bias or prejudice may be set aside as void.

(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court.

**History: En. Sup. Ct. Ord. dated June 17, 1987; amd. July 29, 1987; amd. Sup. Ct. Ord. Sept. 13, 1988, eff. Sept. 13, 1988; amd. Sup. Ct. Ord. dated January 6, 1994.**

**Compiler's Comments**

*1994 Amendment:* In (c), after "allege", inserted "facts". Amendment effective January 6, 1994.

**13-37-218.** *(Resurrected because of suspension of HB 671)* **Limitations on receipts from political committees.** A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to his campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to his campaign. The foregoing limitations shall be multiplied by the inflation factor as defined in 15-30-101(8) for the year in which general elections are held after 1984; the resulting figure shall be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

**13-37-218.** *(Ineffective because of suspension of HB 671)* **Limitations on receipts from political committees.** (1) A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to the campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to the campaign. The foregoing limitations must be multiplied by the inflation factor as defined in subsection (2) for the year in which general elections are held, and the resulting figure must be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

(2) "Inflation factor" means a number determined for each year by dividing the consumer price index for June of the year by the consumer price index for June 1980. The consumer price index to be used in determining the inflation factor is the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

**History: En. Sec. 1, Ch. 529, L. 1983; amd. Sec. 19, Ch. 634, L. 1993.**

**15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at a production level set by the department, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land.

**History: En. Sec. 3, Ch. 693, L. 1979; amd. Sec. 1, Ch. 739, L. 1985; amd. Sec. 3, Ch. 773, L. 1991; amd. Sec. 1, Ch. 267, L. 1993; amd. Sec. 1, Ch. 627, L. 1993.**

**Compiler's Comments**

*1993 Amendments:* Chapter 267 in (2) substituted "applicable to class four property, as provided in 15-6-134(2)(a)" for ""P" of its productive capacity"; deleted (3) and (4) relating to the taxable percentage rate prior to July 1, 1986, and how it was determined (see 1993 Session Law for text); deleted (5) that provided that after July 1, 1986, no adjustment would be made by the Department to the taxable percentage rate "P" until a revaluation was made; and made minor changes in style. Amendment effective April 2, 1993.

Chapter 627 inserted (1)(c) including as class three property parcels of land of 20 acres or more but less than 160 acres that are not eligible for classification as agricultural land; and inserted (3) establishing a method of valuation of those lands. Amendment effective January 1, 1994.

*Effective Date — Applicability:* Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

**15-7-202. Eligibility of land for valuation as agricultural.** (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1), "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(i) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(ii) rental payments made under the federal conservation reserve program or a successor to that program.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(6) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as provided in 15-6-133(1)(c). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property.

**History: En. Sec. 4, Ch. 512, L. 1973; amd. Sec. 2, Ch. 56, L. 1974; amd. Sec. 1, Ch. 457, L. 1975; R.C.M. 1947, 84-437.2; amd. Sec. 1, Ch. 608, L. 1979; amd. Sec. 16, Ch. 693, L. 1979; amd. Sec. 4, Ch. 681, L. 1985; amd. Sec. 1, Ch. 699, L. 1985; amd. Sec. 1, Ch. 35, Sp. L. June 1986; amd. Sec. 1, Ch. 590, L. 1991; amd. Sec. 2, Ch. 705, L. 1991; amd. Sec. 16, Ch. 773, L. 1991; amd. Sec. 3, Ch. 627, L. 1993.**

**Compiler's Comments**

*1993 Amendment:* Chapter 627 near beginning of (1)(a), before "acres", substituted "160" for "20" and near end, before "commercial", inserted "residential"; inserted (1)(b) establishing criteria for parcels of land of 20 acres or more but less than 160 acres to be eligible for classification as agricultural land; inserted first two sentences of (6) requiring application before land less than 160 acres may be classified as agricultural; in (8) included subsection (1) in subsection references; and made minor changes in style. Amendment effective January 1, 1994.

*Applicability:* Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

**15-30-101.** *(Resurrected because of suspension of HB 671)* **Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(18) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(19) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

(20) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations.

**15-30-101.** *(Ineffective because of suspension of HB 671)* **Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6);

(b) the standard deduction provided in 15-30-122, but unadjusted by subsection (4) of 15-30-122.

(2) "Consumer price index" means the consumer price index for all urban consumers, United States city average, for all items, using the 1982-1984 base index of 100, as that base index is periodically adjusted, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June 1993, then subtracting 1, then multiplying by 0.5, then adding 1.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(18) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(19) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

(20) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations.

**History: En. Sec. 1, Ch. 181, L. 1933; re-en. Sec. 2295.1, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973; R.C.M. 1947, 84-4901; amd. Sec. 1, Ch. 476, L. 1979; amd. Sec. 1, Ch. 648, L. 1979; amd. Sec. 1, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 548, L. 1981; amd. Sec. 1, Ch. 289, L. 1989; amd. Sec. 1, Ch. 823, L. 1991; amd. Sec. 1, Ch. 14, Sp. L. July 1992; amd. Sec. 26, Ch. 10, L. 1993; amd. Sec. 1, Ch. 634, L. 1993.**

**15-30-103.** *(Resurrected because of suspension of HB 671)* **Rate of tax.** (1) There shall be levied, collected, and paid for each taxable year commencing on or after December 31, 1968, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions as hereinafter provided, a tax on the following brackets of taxable income as adjusted under subsection (2) at the following rates:

(a) on the first $1,000 of taxable income or any part thereof, 2%;

(b) on the next $1,000 of taxable income or any part thereof, 3%;

(c) on the next $2,000 of taxable income or any part thereof, 4%;

(d) on the next $2,000 of taxable income or any part thereof, 5%;

(e) on the next $2,000 of taxable income or any part thereof, 6%;

(f) on the next $2,000 of taxable income or any part thereof, 7%;

(g) on the next $4,000 of taxable income or any part thereof, 8%;

(h) on the next $6,000 of taxable income or any part thereof, 9%;

(i) on the next $15,000 of taxable income or any part thereof, 10%;

(j) on any taxable income in excess of $35,000 or any part thereof, 11%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section.

**15-30-103.** *(Ineffective because of suspension of HB 671)* **Rate of tax — adjustment.** (1) Subject to subsection (2), there is levied, collected, and paid for each taxable year commencing on or after December 31, 1992, upon the taxable income of every individual subject to this tax, after making allowance for exemptions and deductions, a tax at the rate of 6.7% of the individual's taxable income.

(2) (a) The department shall, pursuant to subsection (2)(b), adjust the tax rate provided in subsection (1) to reflect changes in federal adjusted gross income. The adjustment must maintain a rate that produces revenue that does not exceed 6.7% of taxable income based upon the definition of federal adjusted gross income as provided in 26 U.S.C. 62 on January 1, 1993. Prior to adopting a change in rate, the department shall present the proposed change to the revenue oversight committee for review by the committee.

(b) (i) For purposes of subsection (2)(a), for tax year 1994 and each tax year thereafter, the department shall in the succeeding year determine the change in the amount of revenue collected resulting from changes made by the United States congress to federal adjusted gross income, as defined by the Internal Revenue Code, effective for that year.

(ii) Based on the determination in subsection (2)(b)(i), the tax rate for the tax year following the determination must be adjusted in increments of 0.1%.

(iii) A change in the rate may not be made unless the amount of change exceeds $4.5 million.

**History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; re-en. Sec. 2295.2, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969; R.C.M. 1947, 84-4902; amd. Sec. 2, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 634, L. 1993.**

**15-30-105.** *(Resurrected because of suspension of HB 671)* **Tax on nonresident — alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall

be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

**15-30-105.** *(Ineffective because of suspension of HB 671)* **Tax on nonresident — alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax must be levied, collected, and paid annually at the rate specified in 15-30-103 with respect to the person's taxable income.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

**History: En. Sec. 3, Ch. 181, L. 1933; re-en. Sec. 2295.3, R.C.M. 1935; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971; R.C.M. 1947, 84-4903; amd. Sec. 1, Ch. 422, L. 1981; amd. Sec. 2, Ch. 14, Sp. L. July 1992; amd. Sec. 3, Ch. 634, L. 1993.**

**15-30-111.** *(Resurrected because of suspension of HB 671)* **Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner

married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. *(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)*

**15-30-111.** *(Ineffective because of suspension of HB 671)* **Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(c) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, and service charges received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging. For the purposes of this subsection (f), "service charge" means an arbitrary fixed charge added to the customer's bill by the person's employer in lieu of a tip. It is collected by the employer and paid to the person by the employer.

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) except as provided in subsection (7), for a single joint return of husband and wife, an amount, not to exceed $3,000, equal to 10% of the earned income received by the spouse that earned the lesser amount of earned income in the tax year.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted

gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) The amount specified in subsection (2)(j) is reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000. *(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)*

**History: En. Sec. 5, Ch. 181, L. 1933; re-en. Sec. 2295.5, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971; amd. Sec. 1, Ch. 158, L. 1975; amd. Sec. 1, Ch. 411, L. 1975; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 84-4905; amd. Sec. 1, Ch. 483, L. 1981; amd. Sec. 2, Ch. 537, L. 1981; amd. Sec. 1, Ch. 546, L. 1981; amd. Sec. 1, Ch. 550, L. 1981; amd. Sec. 1, Ch. 13, L. 1983; amd. Sec. 1, Ch. 634, L. 1983; amd. Sec. 1, Ch. 198, L. 1985; amd. Sec. 1, Ch. 364, L. 1985; amd. Sec. 1, Ch. 464, L. 1985; amd. Sec. 1, Ch. 682, L. 1985; amd. Sec. 48, Ch. 370, L. 1987; amd. Sec. 10, Ch. 494, L. 1987; amd. Sec. 1, Ch. 657, L. 1987; amd. Sec. 1, Ch. 532, L. 1989; amd. Sec. 3, Ch. 617, L. 1989; amd. Sec. 1, Ch. 807, L. 1991; amd. Sec. 2, Ch. 823, L. 1991; amd. Sec. 4, Ch. 634, L. 1993.**

**15-30-112.** *(Resurrected because of suspension of HB 671)* **Exemptions.** (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.

**15-30-112.** *(Ineffective because of suspension of HB 671)* **Exemptions.** (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) are allowed as deductions in computing taxable income.

(2) (a) An exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the taxpayer.

(b) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's taxable year.

(b) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the taxpayer if the taxpayer is blind at the close of the taxpayer's taxable year.

(b) An additional exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (b), the determination of whether the spouse is blind must be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during the taxable year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the individual's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if the individual's visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $2,710 is allowed for taxable years beginning after December 31, 1992, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $2,710; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) An exemption is not allowed under this subsection (5) for any dependent who has made a joint return with the dependent's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) (a) The exemptions provided for in this section are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000.

(b) For tax years beginning after December 31, 1993, the department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and must be used in calculating the tax imposed in 15-30-103.

**History: En. Sec. 10, Ch. 181, L. 1933; re-en. Sec. 2295.10, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1941; amd. Sec. 1, Ch. 196, L. 1949; amd. Sec. 1, Ch. 233, L. 1957; amd. Sec. 3, Ch. 253, L. 1959; amd. Sec. 2, Ch. 199, L. 1963; amd. Sec. 1, Ch. 363, L. 1974; R.C.M. 1947, 84-4910(a) thru (e), (i); amd. Sec. 8, Ch. 698, L. 1979; amd. Sec. 3, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 2, Ch. 548, L. 1981; amd. Sec. 3, Ch. 14, Sp. L. July 1992; amd. Sec. 5, Ch. 634, L. 1993.**

**15-30-117.** *(Resurrected because of suspension of HB 671)* **Net operating loss — computation.** (1) A Montana net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by the following:

(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a Montana trade or business; and

(ii) Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the following:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended.

**15-30-117.** *(Ineffective because of suspension of HB 671)* **Net operating loss — computation.** (1) A Montana net operating loss for a loss incurred in tax years beginning after December 31, 1992, must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a).

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include income defined as exempt from state taxation under 15-30-111(2).

**History: En. Sec. 1, Ch. 142, L. 1985; amd. Sec. 15, Ch. 83, L. 1989; amd. Sec. 1, Ch. 20, L. 1991; amd. Sec. 2, Ch. 807, L. 1991; amd. Sec. 6, Ch. 634, L. 1993.**

**15-30-121.** *(Resurrected because of suspension of HB 671)* **Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and (9) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(iii) a spouse who is unable to provide self-care because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent the expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent the expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) premium payments for long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

(9) (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined

in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (9). *(Subsection (8) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)*

**15-30-121. Repealed.** Sec. 22, Ch. 634, L. 1993. *(Repealer ineffective because of suspension of HB 671.)*

**History: En. Sec. 6, Ch. 181, L. 1933; re-en. Sec. 2295.6, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955; amd. Sec. 1, Ch. 102, L. 1977; amd. Sec. 2, Ch. 574, L. 1977; amd. Sec. 5, Ch. 576, L. 1977; R.C.M. 1947, 84-4906; amd. Sec. 1, Ch. 90, L. 1979; amd. Sec. 1, Ch. 129, L. 1979; amd. Sec. 3, Ch. 480, L. 1981; amd. Sec. 4, Ch. 533, L. 1981; amd. Sec. 20, Ch. 614, L. 1981; amd. Sec. 1, Ch. 118, L. 1983; amd. Sec. 10, Ch. 516, L. 1985; amd. Sec. 8, Ch. 610, L. 1985; amd. Sec. 1, Ch. 613, L. 1985; amd. Sec. 1, Ch. 501, L. 1987; amd. Sec. 11, Ch. 611, L. 1987; amd. Sec. 1, Ch. 613, L. 1991; amd. Sec. 2, Ch. 670, L. 1991; amd. Sec. 6, Ch. 808, L. 1991; amd. Sec. 1, Ch. 565, L. 1993.**

**Compiler's Comments**

*1993 Amendment:* Chapter 565 in (3), in introductory clause, inserted reference to subsection (9); inserted (9) relating to deduction of day-care operator's employment-related expenses for own child; and made minor changes in style. Amendment effective April 28, 1993.

*Coordination Instruction — Contingent Termination:* Section 2, Ch. 565, L. 1993, provided: "(1) If House Bill No. 671 is passed and approved and it repeals 15-30-121, then [this act] is void.

(2) If Senate Bill No. 235 is passed and approved by the electors of Montana and it repeals 15-30-121 and if House Bill No. 671 is not passed and approved, then [this act] terminates December 31, 1993."

House Bill No. 671 was passed by the Legislature and approved by the Governor, but its operation was suspended pending approval of the electorate at the general election to be held in November 1994. Senate Bill No. 235 was not approved by the electors.

*Effective Date — Retroactive Applicability:* Section 3, Ch. 565, L. 1993, provided: "[This act] is effective on passage and approval [approved April 28, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

**15-30-122.** *(Resurrected because of suspension of HB 671)* **Standard deduction.** (1) A standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns by the inflation factor for that taxable year and round the product to the nearest $10. The standard deduction for joint returns and qualified head of household returns shall be twice the amount for single returns. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.

**15-30-122.** *(Ineffective because of suspension of HB 671)* **Standard deduction.** (1) A standard deduction of adjusted gross income is allowed on the taxpayer's return.

(2) (a) Except as provided in subsections (2)(b) through (2)(e), the standard deduction is 40% of Montana adjusted gross income, but not more than $5,000.

(b) For a single joint return of husband and wife, the standard deduction is 40% of Montana adjusted gross income, but not more than $10,000.

(c) For a single individual who qualifies to file as a head of household on the individual's federal income tax return, the standard deduction is 40% of Montana adjusted gross income, but not more than $7,500.

(d) The standard deduction for married taxpayers filing separately is 40% of Montana adjusted gross income, but not more than $5,000.

(e) The standard deductions provided for in this subsection (2) are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000.

(3) For purposes of this section, the determination of whether an individual is married must be made as of the last day of the taxable year. However, if one of the spouses dies during the taxable year, the determination must be made as of the date of death.

(4) For taxable years beginning after December 31, 1993, by November 1 of each year, the department shall multiply the standard deduction for single returns, qualified-head-of-household returns, and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and must be used in calculating the tax imposed in 15-30-103.

**History: En. Sec. 8, Ch. 181, L. 1933; re-en. Sec. 2295.8, R.C.M. 1935; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. Ch. 357, L. 1971; R.C.M. 1947, 84-4908; amd. Sec. 11, Ch. 698, L. 1979; amd. Sec. 4, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 516, L. 1981; amd. Sec. 1, Ch. 501, L. 1983; amd. Sec. 1, Ch. 30, L. 1985; amd. Sec. 4, Ch. 14, Sp. L. July 1992; amd. Sec. 7, Ch. 634, L. 1993.**

**15-30-126.** *(Resurrected because of suspension of HB 671)* **Small business corporation — deduction for donation of computer equipment to schools.** A small business corporation, as defined in 15-31-201, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services;

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions.

**15-30-126.** *(Ineffective because of suspension of HB 671)* **Small business corporation — deduction for donation of computer equipment to schools.** A small business corporation, as defined in 15-31-201, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services; and

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2).

**History: En. Sec. 2, Ch. 447, L. 1983; amd. Sec. 3, Ch. 807, L. 1991; amd. Sec. 9, Ch. 634, L. 1993.**

**15-30-131.** *(Resurrected because of suspension of HB 671)* **Nonresident and temporary resident taxpayers — adjusted gross income.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income as provided for in 15-30-111.

**15-30-131.** *(Ineffective because of suspension of HB 671)* **Nonresident and part-year resident taxpayers — adjusted gross income.** (1) In the case of a nonresident or part-year resident taxpayer, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but does not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations, except to the extent to which the income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations are a part of income from any business, trade, profession, or occupation carried on in this state. Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in Montana adjusted gross income. Adjusted gross income from sources within and outside of this state must be allocated and apportioned under rules adopted by the department in accordance with the Multistate Tax Compact.

(2) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments.

(3) The deductions allowed in computing net income are restricted to a prorated standard deduction, as adjusted, allowed under 15-30-122 and prorated exemptions, as adjusted, allowed under 15-30-112. The standard deduction and the claimable exemptions must be prorated according to the ratio that the taxpayer's Montana adjusted gross income bears to the taxpayer's federal adjusted gross income.

**History: En. Sec. 7, Ch. 181, L. 1933; re-en. Sec. 2295.7, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973; R.C.M. 1947, 84-4907; amd. Sec. 1, Ch. 623, L. 1979; amd. Sec. 4, Ch. 480, L. 1981; amd. Sec. 1, Ch. 378, L. 1983; amd. Sec. 1, Ch. 199, L. 1985; amd. Sec. 5, Ch. 14, Sp. L. July 1992; amd. Sec. 10, Ch. 634, L. 1993.**

**15-30-137.** *(Resurrected because of suspension of HB 671)* **Determination of tax of estates and trusts.** The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

**15-30-137.** *(Ineffective because of suspension of HB 671)* **Determination of tax of estates and trusts.** The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rate contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

**History: En. Sec. 3(3), Ch. 260, L. 1983; amd. Sec. 11, Ch. 634, L. 1993.**

**15-30-142.** *(Resurrected because of suspension of HB 671)* **Returns and payment of tax — penalty and interest — refunds — credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4).

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a

joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

**15-30-142.** *(Ineffective because of suspension of HB 671)* **Returns and payment of tax — penalty and interest — refunds — credits.** (1) A return must be filed as provided in subsections (2)(a) through (2)(d) on forms and according to rules prescribed by the department. The filing status used in subsection (2) must be the same status used for the individual's or married couple's federal income tax return.

(2) A return must be filed by:

(a) each single individual having gross income for the taxable year of more than the combined amount of the standard deduction for a single individual plus the amount for the exemption claimable by the individual as provided in 15-30-112;

(b) each individual filing as a head of household having gross income for the taxable year of more than the combined amount of the standard deduction for a head of household plus the amount for the exemption claimable by the individual as provided in 15-30-112;

(c) married individuals not filing separate returns and having a combined gross income for the taxable year of more than the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individuals as provided in 15-30-112; and

(d) married individuals filing separately with combined gross income exceeding one-half of the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individual as provided in 15-30-112.

(3) A nonresident is required to file a return if the nonresident's gross income for the taxable year derived from sources within Montana exceeds the total amount of the prorated exemption deduction and prorated standard deduction claimable by the nonresident and the nonresident's spouse under the provisions of 15-30-112(2), (3), and (4).

(4) In accordance with instructions set forth by the department, every taxpayer who is married, who is living with the taxpayer's spouse, and who is required to file a return may, at the taxpayer's option, file a joint return with the spouse even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(5) If a taxpayer is unable to make a return that is required to be made by the taxpayer, the return must be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(6) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and any payment made by reason of an estimated tax return provided for in 15-30-241 if the tax computed is greater by $1 than the amount withheld or paid by estimated return as provided in this chapter. If the amount of tax withheld or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(7) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(8) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction of a year on the additional tax. In that case, there is no penalty because of the understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(9) By November 1 of each year, the department shall determine the minimum amount of gross income necessitating the filing of a return for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

(10) Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

(11) For the purposes of this section:

(a) "exemption" means an exemption provided by 15-30-112 and includes the adjustment provided in 15-30-112(6); and

(b) "standard deduction" means a deduction provided by 15-30-122 and includes the adjustment provided in 15-30-122(4).

**History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 12, Ch. 698, L. 1979; amd. Secs. 5, 6, I.M. No. 86, approved Nov. 4, 1980; amd. Sec. 1, Ch. 4, L. 1981; amd. Sec. 2, Ch. 477, L. 1981; amd. Sec. 3, Ch. 548, L. 1981; amd. Sec. 8, Ch. 14, Sp. L. July 1992; amd. Sec. 12, Ch. 634, L. 1993.**

**15-30-156.** *(Resurrected because of suspension of HB 671)* **Deduction for contributions to child abuse and neglect prevention program.** A taxpayer filing an individual income tax return who does not elect to take the standard deduction provided for in 15-30-122 may, in computing net income, claim a deduction for the payment of a contribution to the child abuse and neglect prevention program as follows:

(1) If the taxpayer paid a contribution in the taxable year for which the return is filed, he may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or other order to pay money as a contribution with the timely filing of a tax return, in accordance with 15-30-144, he may elect to take a deduction for the amount of the contribution and apply the deduction in the taxable year for which he is filing the return.

**15-30-156. Repealed.** Sec. 22, Ch. 634, L. 1993. *(Repealer ineffective because of suspension of HB 671.)*

**History: En. Sec. 10, Ch. 610, L. 1985.**

**15-30-157.** *(Resurrected because of suspension of HB 671)* **Deposit of deductible contributions.** (1) All money received under 15-30-156 must be deposited in the children's trust fund account established in 41-3-702.

(2) The department of revenue shall immediately forward for deposit in the children's trust fund account all checks and other orders of payment made as contributions under 15-30-156. The department may make no deductions for administrative expenses in the handling of such direct payments to the child abuse and neglect prevention program.

**15-30-157. Repealed.** Sec. 22, Ch. 634, L. 1993. *(Repealer ineffective because of suspension of HB 671.)*

**History: En. Sec. 11, Ch. 610, L. 1985.**

**15-30-159.** *(Resurrected because of suspension of HB 671)* **Deductions for contributions to Montana drug abuse resistance education program.** A taxpayer who files an individual tax return and who does not elect to take a standard deduction provided for in 15-30-122 may, in computing net income, claim a deduction for the payment of a contribution to the Montana drug abuse resistance education program as follows:

(1) If the taxpayer paid a contribution in the taxable year for which the return is filed, he may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or money order as a contribution when filing his tax return in accordance with 15-30-144, he may elect to take a deduction for the amount of the contribution and apply the deduction in the taxable year for which he is filing the return. *(Terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)*

**15-30-159. Repealed.** Sec. 22, Ch. 634, L. 1993. *(Repealer ineffective because of suspension of HB 671.)*

**History: En. Sec. 8, Ch. 808, L. 1991.**

**15-30-160.** *(Resurrected because of suspension of HB 671)* **Deposit of deductible contributions.** (1) All money received under 15-30-159 must be deposited in the Montana drug abuse resistance education trust fund account established in 44-2-701.

(2) The department shall immediately forward for deposit in the Montana drug abuse resistance education trust fund account all checks and other orders of payment made as contributions under 15-30-159. The department may not make deductions for administrative expenses in the handling of direct payments to the Montana drug abuse resistance education program. *(Terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)*

**15-30-160. Repealed.** Sec. 22, Ch. 634, L. 1993. *(Repealer ineffective because of suspension of HB 671.)*

**History: En. Sec. 9, Ch. 808, L. 1991.**

**15-30-170.** *(Ineffective because of suspension of HB 671)* **Credit for sale of business.** (1) (a) For tax years beginning after December 31, 1992, an individual who realizes a gain that must be included in Montana adjusted gross income, from the sale of a business, trade, or profession, is allowed a one-time credit against the tax imposed by 15-30-103.

(b) To be eligible for the credit, the individual, including the individual's parents, grandparents, children, and grandchildren, must have held the interest in the business, trade, or profession for at least 15 years.

(2) (a) Subject to the limitation contained in subsection (2)(b), the credit must be computed by multiplying the gain that was included in the Montana adjusted gross income from the sale times the individual's highest federal tax rate in the tax year in which the gain from the sale is reported times this state's highest tax rate for that individual in the same year.

(b) For an individual who realized a gain in excess of $1 million, the credit is reduced at the rate of 1% for every $20,000 of gain in excess of $1 million.

(c) The credit provided for in this section is not refundable, nor may it be carried back or carried forward.

(3) For sales that occurred prior to December 31, 1992, and for which the gain for the sale of the business, trade, or profession is being reported on the installment basis, the individual shall satisfy the requirements of subsection (1)(b).

**History: En. Sec. 8, Ch. 634, L. 1993.**

**15-30-199.** *(Resurrected because of suspension of HB 671) (Temporary)* **Surtax.** Each person required to file a Montana individual income tax return shall pay, in addition to the tax liability computed as required in 15-30-103, a surtax of 2.3% of the tax liability for tax year 1992 and a surtax of 4.7% of the tax liability for tax year 1993.

**15-30-199. Repealed.** Sec. 22, Ch. 634, L. 1993. *(Repealer ineffective because of suspension of HB 671.)*

**History: En. Sec. 2, Ch. 15, Sp. L. July 1992.**

**15-30-323.** *(Resurrected because of suspension of HB 671)* **Penalty for deficiency.** (1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there shall be added to the amount of the deficiency 5% thereof; provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subsection, the interest shall in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest thereon at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment.

**15-30-323.** *(Ineffective because of suspension of HB 671)* **Penalty for deficiency.** (1) If the payment required by 15-30-142(8) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there must be added to the amount of the deficiency 5% of the deficiency. However, a deficiency penalty may not be less than $2. Interest must be computed at the rate of 9% per annum or fraction of a year on the additional assessment. Except as otherwise expressly provided in this subsection, the interest must in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment.

**History: En. Sec. 14, Ch. 181, L. 1933; re-en. Sec. 2295.14, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973; amd. Sec. 1, Ch. 159, L. 1977; R.C.M. 1947, 84-4914(part); amd. Sec. 3, Ch. 477, L. 1981; amd. Sec. 13, Ch. 634, L. 1993.**

**15-31-121.** *(Resurrected because of suspension of HB 671) (Temporary)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this subsection

(1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1992, 2.3% of the tax liability and, as a surtax for tax year 1993, 4.7% of the tax liability, and the amount so derived is the amount due the state.

(5) The additional tax collected under subsection (4) must be deposited to the credit of the state general fund.

**15-31-121.** *(Resurrected because of suspension of HB 671) (Effective on receipt of taxes for tax year 1993)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state.

**15-31-121.** *(Ineffective because of suspension of HB 671) (Temporary for tax year 1993)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is:

(a) 7.08% of the first $500,000 of net income for the taxable period; and

(b) 7.57% of all net income in excess of $500,000 for the taxable period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is:

(a) 7.33% of the first $500,000 of taxable net income for the taxable period; and

(b) 7.82% of all net income in excess of $500,000 for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $100.

**15-31-121.** *(Ineffective because of suspension of HB 671) (Effective for tax year 1994 and thereafter)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is:

(a) 6 3/4% of the first $500,000 of net income for the taxable period; and

(b) 7 1/4% of all net income in excess of $500,000 for the taxable period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is:

(a) 7% of the first $500,000 of taxable net income for the taxable period; and

(b) 7.5% of all net income in excess of $500,000 for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $100.

**History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16, amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R.C.M. 1921; amd. Sec. 1, Ch. 166, L. 1933; re-en. Sec. 2296, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973; amd. Sec. 1, Ch. 5, L. 1974; amd. Sec. 1, Ch. 257, L. 1977; R.C.M. 1947, 84-1501(part); amd. Sec. 7, Ch. 616, L. 1987; amd. Sec. 90, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 15, Sp. L. July 1992; amd. Sec. 14, Ch. 634, L. 1993.**

**15-31-131.** *(Resurrected because of suspension of HB 671)* **Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989.

**15-31-131.** *(Ineffective because of suspension of HB 671)* **Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989.

**History: En. Sec. 1, Ch. 706, L. 1989; amd. Sec. 1, Ch. 416, L. 1991; amd. Sec. 17, Ch. 634, L. 1993.**

**15-31-202.** *(Resurrected because of suspension of HB 671)* **Small business corporation not subject to chapter.** (1) A small business corporation is not subject to the taxes imposed by this chapter. The corporate net income or loss of the corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

(2) Each small business corporation is required to pay the minimum fee of $10 required by 15-31-204.

**15-31-202.** *(Ineffective because of suspension of HB 671)* **Small business corporation not subject to chapter.** (1) A small business corporation is not subject to the taxes imposed by this chapter. The corporate net income or loss of the corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

(2) Each small business corporation is required to pay the minimum fee of $25 required by 15-31-204.

**History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973; amd. Sec. 1, Ch. 34, L. 1977; amd. Sec. 2, Ch. 405, L. 1977; R.C.M. 1947, 84-1501.2; amd. Sec. 22, Ch. 581, L. 1979; amd. Sec. 2, Ch. 667, L. 1983; amd. Sec. 7, Ch. 807, L. 1991; amd. Sec. 15, Ch. 634, L. 1993.**

**15-31-204.** *(Resurrected because of suspension of HB 671)* **Minimum fee of small business corporations unaffected.** Notwithstanding the provisions of 15-31-121, small business corporations shall pay a minimum fee of $10.

**15-31-204.** *(Ineffective because of suspension of HB 671)* **Minimum fee of small business corporations unaffected.** Notwithstanding the provisions of 15-31-121, small business corporations shall pay a minimum fee of $25.

**History: En. Sec. 2, Ch. 11, Ex. L. 1969; R.C.M. 1947, 84-1501.5; amd. Sec. 8, Ch. 807, L. 1991; amd. Sec. 16, Ch. 634, L. 1993.**

**15-32-303.** *(Resurrected because of suspension of HB 671)* **Deduction for purchase of Montana produced organic fertilizer.** In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct his expenditures for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income.

**15-32-303.** *(Ineffective because of suspension of HB 671)* **Deduction for purchase of Montana produced organic fertilizer.** In addition to all other deductions from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct expenditures made by the taxpayer for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income.

**History: En. Sec. 3, Ch. 533, L. 1981; amd. Sec. 18, Ch. 634, L. 1993.**

**19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", except as provided in 19-3-520, means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

**History:** En. Sec. 44, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993.

**85-2-706. Renumbered 85-20-401 by Code Commissioner, 1994.**

**85-2-707. Renumbered 85-20-402 by Code Commissioner, 1994.**

## Part 4

## United States Park Service-Montana Compact

**85-20-401. United States National Park Service-Montana compact ratified.** The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

### WATER RIGHTS COMPACT

### STATE OF MONTANA

### UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

### RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Glacier National Park, see United States v.

Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. §1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

## ARTICLE I

## DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.

(3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.

(4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.

(5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.

(6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.

(7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.

(8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.

(9) "Category 4 stream" means a stream that is treated individually due to special circumstances.

(10) "Consumptive use" means use of surface water not considered a non-consumptive use under (24) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.

(a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993.

(b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993.

(11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.

(12) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(13) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(14) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.

(15) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.

(16) "Groundwater" means water that is beneath the ground surface.

(17) (a) "Hydrologically connected", for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.

(b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.

(18) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(19) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.

(20) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(21) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.

(22) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886.

(23) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(24) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, or a water right recognized under state law with a priority date before January 1, 1993, means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(25) "Parties" means the State of Montana and the United States.

(26) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(27) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(28) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(29) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(30) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for

purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(31) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(32) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

(33) "Unincorporated municipality" includes but is not limited to a rural special improvement district or any other entity that serves community water needs.

(34) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

(35) "Working Group Report" means the Abridged and Unabridged reports by Custer, S., et. al. dated January 5, 1993, and titled Recommended Boundary for Controlled Groundwater Area in Montana Near Yellowstone National Park and accompanying maps.

(36) "Yellowstone National Park" or "YNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved for Yellowstone National Park by the Act of March 1, 1872, 17 Stat. 32; Act of May 26, 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013 of October 20, 1932, 47 Stat. 2537.

## ARTICLE II

## IMPLEMENTATION

A. Abstract:

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234(4) and (7), MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

B. Method of Allocation of Water on Category 3 and 4 Streams:

This section explains the method of quantification of the reserved instream flow water rights of the United States for Category 3 and 4 streams and the method of calculating the quantity of consumptive use pursuant to state law within a basin to which the United States agrees to subordinate its reserved instream flow water right. The method set forth in this section shall be used to determine whether the limits on consumptive use pursuant to state law set forth in Article III have been reached. Addition to the Abstract of a reserved instream flow water right on a stream inadvertently omitted by the parties or reclassification of a stream due to a water right recognized under state law and inadvertently omitted by the parties shall be consistent with this section and shall not be deemed a modification of this Compact.

1. Allocation to Instream Flow:

The allocation of water to instream flow on Category 3 and 4 streams is arrived at using the following method as explained in general terms:

a. The United States' reserved water right for instream flow includes the entire flow of that stream within the State of Montana at the point where the stream flows over or forms the boundary of the specified reserved land after: (1) all consumptive use water rights of any agency of the United States recognized under federal or state law are satisfied; and (2) subordination of the reserved water right for instream flow to water rights recognized under state law as set forth in and limited by Article III and more specifically in the Abstract.

b. Actual use of water in Wyoming or Canada shall not diminish the quantity of water designated for consumptive use pursuant to state law as set forth in Article III.

2. Method of Calculation of Consumptive Use Rights Recognized Under State Law:

To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to consumptive uses has been reached, the following provisions shall apply:

a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under state law, of surface water tributary to the stream to the point it enters the reserved land. The limits on total consumptive use on a Category 4 stream that forms the boundary of the reserved land shall include all current and future consumptive use recognized under state law, of surface water tributary to the stream to the most downstream point that the stream forms the boundary of the reserved land.

b. Groundwater:

i. An exemption from state permit requirements for wells or developed springs shall not apply to appropriations within a basin tributary to the reserved portion of a Category 3 or 4 stream after the effective date of this Compact, provided that the registration process set forth in Article II, section B.2.b.ii.(3)(b) shall apply to applications for a permit for a well of 35 gpm or less, not to exceed 10 acre-feet per year. In addition, all groundwater appropriations within the Yellowstone Controlled Groundwater Area shall be subject to Article IV.

ii. The calculation of total consumptive use on a Category 3 or 4 stream shall include appropriations of groundwater as follows:

(1) Pre-January 1, 1993: An appropriation of groundwater with a priority date before January 1, 1993, shall not be included in the calculation of total consumptive use.

(2) January 1, 1993 - Effective Date: An appropriation of groundwater with a priority date on or after January 1, 1993, but before the effective date of this Compact shall be included in the calculation of total consumptive use if the following procedural requirements are met and the appropriation is found to be hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream.

(a) Within 120 days after the effective date of this Compact, the Department shall provide the United States with notice of all groundwater appropriations in drainages tributary to the reserved portion of a Category 3 or 4 stream that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

(b) Up to 120 days following mailing of such notice the United States shall provide the Department with credible information that a groundwater appropriation included in the notice is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(c) Within 60 days of receipt of such information, the Department shall issue an order stating that (1) the appropriation is hydrologically connected to surface water tributary to the Category 3 or 4 stream; and (2) the action to be taken with respect to the appropriation. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order. If credible information of hydrologic connection has not been provided by the United States, the Department shall issue an order stating its determination and reasons therefore.

(d) If the appropriator enters an appearance to contest the order, the Department shall (1) issue an order staying use of the appropriation pending a final decision on the matter by the Department only if the limits on total consumptive use for that drainage have been reached; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, provided that the burden of proving hydrologic connection shall be as set forth in Article II, section B.2.b.(3). The Department shall, whenever possible, consolidate any proceedings on the groundwater application pursuant to Article IV with any proceeding made necessary by this Article.

(3) Post-Effective Date: An appropriation of groundwater recognized under state law with a priority date after the effective date of this Compact shall be included in the calculation of total consumptive use if the following conditions apply:

(a) Wells in excess of 35 gallons per minute or 10 acre-feet per year: The limit on total consumptive use shall include groundwater appropriation by a well or developed spring with a permit amount in excess of 35 gpm or any well with a volume of use greater than 10 acre-feet per year, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the applicant is able to show by a preponderance of the evidence that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(i) The applicant shall submit credible information, including a report to the Department prepared by a professional qualified in the science of groundwater hydrology verifying that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream. If the applicant fails to submit the report, the application shall be considered defective and shall be returned to the applicant for completion as provided by state law.

(ii) The Department shall provide notice of the proposed appropriation and a copy of the report to the United States concurrent with notice pursuant [to] 85-2-307, MCA.

(iii) Within 60 days of the mailing of notice, the United States shall file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(iv) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. In doing so the Department shall make a specific finding on the adequacy of the report provided by the applicant.

(v) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(b) Wells of 35 gallons per minute or less and 10 acre-feet per year or less:

(i) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the department.

(ii) The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing. Within 30 days of the receipt of notice, the United States may file an objection to the application on the basis that the proposed appropriation is of groundwater that is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(iii) As long as the limit on consumptive use rights for a Category 3 or 4 stream has not been reached, the calculation of total consumptive use shall not include groundwater appropriations by well or a developed spring of 35 gallons per minute or less that do not exceed 10 acre feet per year unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(iv) After the limit on consumptive use rights has been reached on a particular stream, the necessary showing by the United States' shall be to file an objection and come forward with credible information showing that the proposed appropriation is hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. If the United States makes such a showing, the Department shall consider the application under the criteria in Article II, section B.2.b.(3)(b)(v) and (vi).

(v) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream.

(vi) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

iii. Within 2 years after the effective date of this Compact, the Department, in consultation with the United States, is directed to promulgate rules as may be necessary to implement Article II, section B.2.b. Said rules shall not alter the rights or obligations of the parties hereto.

c. Effect of Decree in Calculation of Consumptive Use: Except as provided in Article II, section G., for the purposes of this Compact, the flow rate of a consumptive use shall be as finally decreed in a general adjudication, or recognized under state law until such final decree. At each stage in an adjudication, the allocation to current use as set forth in Article III and more specifically in the Abstract shall be adjusted to reflect the decreed amount.

d. Abandonment: When a consumptive use right recognized under state law on a Category 3 or 4 stream is abandoned and such abandonment causes water to become available for appropriation within the limits of the total amounts of water allocated to consumptive use rights recognized under state law established for that stream by Article III, the increment of water below that limit is available for new appropriation in accordance with state law and this Compact. State law governs the issue of whether an abandonment has occurred.

e. Non-Consumptive Use: The limit on total consumptive use rights recognized under state law shall not include non-consumptive uses as defined by this Compact.

C. Subordination of Instream Flow Right:

1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved water right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may be initiated in a state or federal court of competent jurisdiction pursuant to Article II, section I.

2. The reserved water rights described in this Compact shall not be subordinate to water rights which were forfeited by 85-2-226 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact.

D. Location of Instream Flow Rights: The United States' reserved water rights for instream flow apply to the portion of the Categories 1 through 4 streams specified in this Compact that flow over or form the boundary to reserved land administered by the National Park Service.

E. Change in Instream Flow Right: Except as provided in Article II, section J.2.b., the water rights dedicated to instream flow by this Compact shall not be changed to any other use.

F. Prohibition on Future Impoundments: With the exception of the North Fork of the Big Hole River and its tributaries, no new impoundments may be permitted on the mainstem of a Category 2, 3, or 4 stream upstream of, or along, the portion of the stream for which a water right for instream flow is described in this Compact after the effective date of this Compact. This prohibition shall include impoundments that are exempt from permit requirements under state law. Reclamation, repair or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that without the consent of the United States, reclamation, repair or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment. This prohibition shall not apply to impoundments constructed to store a Tribal water right or to implement settlement of litigation regarding quantification of a Tribal water right. On Category 3 and 4 streams for which an instream flow right is described for periods of low flow as set forth in Article III, sections G.3.c. and d., such water right has not been subordinated to a new water right with the method of diversion as an impoundment on the mainstem of the stream with a priority date on or after January 1, 1993, but before the effective date of this Compact.

G. Management to Maximize Use by Montana Water Users of the Water Allocated to Consumptive Use Rights Recognized Under State Law: If any type of conservation or water distribution plan which includes measurement of actual water use, including use pursuant to rights recognized under state law with a priority date before January 1, 1993, is adopted pursuant to state law, the limits established for consumptive use appropriated pursuant to state law shall apply to actual measured use, not permitted and decreed or claimed rights, provided that records of actual use be made available to the United States on request and provided further that, such plan shall not diminish the reserved water right of the United States as described in this Compact.

H. Basin Closure

1. Except as provided in Article II, section B.2.d., in the following drainage basins upstream of the portion of the stream for which a reserved water right for instream flow is described in this Compact, the Department shall not process or grant an application or registration for a permit to appropriate or to reserve water for future consumptive use as defined by this Compact once the limits on consumptive use tabulated in Article III and set forth more specifically in the Abstract are reached:

Big Hole National Battlefield:
    North Fork of the Big Hole River
Glacier National Park:
    North Fork of the Flathead River
    Middle Fork of the Flathead River
Yellowstone National Park:
    Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, Snowslide, Crevice, Dry Canyon, Slough, Tepee,

and Soda Butte Creeks, and the Gallatin, Madison, and Yellowstone Rivers

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

I. Enforcement of Water Right

1. The United States, the state, or the holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a federal reservation for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the federal reservation, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of instream flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department or the Bureau may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department or Bureau shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for instream flow described in this Compact.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law, including but not limited to, revocation of a permit issued pursuant to Article IV after the effective date of this Compact.

7. For any appeal to state court of an administrative decision authorized by this Compact, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of

contested cases under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

8. In any contested case proceeding held under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

J. Change in Use

1. Change in Use Defined: For the purpose of this Article, the following actions affecting the use of a reserved water right for consumptive use described in this Compact shall be considered a change in use:

a. An action that alters type of use, place of use, point of diversion, place or means of storage, period of use or point of return flow that will:

i. increase the net depletion on a source; or

ii. adversely affect water quality at the point the reserved water right ends; or

iii. result in a change in point of diversion or point of return flow relative to a holder of a water right recognized under state law; or

iv. change the point of diversion from groundwater to surface water, or from surface to groundwater; or

v. in any other manner, adversely affects the reasonable exercise of a water right that is recognized under state law.

b. The exercise of a reserved water right to future consumptive use as authorized by this Compact shall not be considered a change in use.

2. Instream flow: Reserved water rights specified in this Compact for instream flow shall not be subject to change to any other use, provided that:

a. the emergency use of water for fire suppression as provided for in Article III.H. shall not be deemed a change or alteration in use, or violation of a reserved water right for instream flow; and

b. the United States may seek to appropriate water for a consumptive use on a source for which no consumptive use is described in this Compact by seeking a permit under state law for consumptive use, provided that the water right granted shall not be counted against the limits on allocation for state consumptive use water rights imposed by this Compact. The water right so acquired shall be administered in accordance with Article V, section B.

3. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that (1) the action shall be in fulfillment of the purposes of the reservation; (2) the total use shall not exceed the amount described in this Compact; and (3) the action shall not adversely affect a water right that is recognized under state law.

4. Notice of intent to change use: At least 180 days prior to a change in use, the United States agrees to provide notice to the Department.

a. The notice shall contain the facts pertinent to the proposed change including, where applicable:

i. The location of a new point of diversion.

ii. The new source of water.

iii. The new means of diversion.

iv. If a well is involved, the depth and locations of the old and new well.

v. The new use and its impact on actual consumption and water quality.

vi. If the change includes storage, the location, period and capacity of the storage facility.

vii. An estimate of when the change will be effective.

viii. A map showing the existing system and the proposed change.

b. At least 120 days prior to the proposed change, the United States agrees to publish the notice required by Article II, section J.4.a. with a statement that within 60 days following publication or service of notice, relief may be sought in a state or federal court of competent jurisdiction, once in a newspaper of general circulation in the area of the source, and to serve the notice by first-class mail on interested and potentially affected persons as identified by the records of the Department, including:

i. an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation;

ii. a purchaser under contract for deed that, according to the records of the Department, may be affected by the proposed appropriation;

iii. any public agency that has reserved water in the source recognized under state law; and

iv. a federal agency or Tribe that claim a reserved water right or other water rights in the source.

c. On request by the United States, the Department shall provide the information contained in its records identifying any person potentially affected by the proposed change. The United States agrees to reimburse the Department for the expense of providing this information.

d. In the event that future changes in state law establish a method of notice of a proposed change in use to interested and potentially affected persons other than by first-class mail, the United States may alter the method of notification accordingly.

e. Prior to the actual change, the United States agrees to provide the Department with proof of notice by affidavit.

5. Objection to proposed change: Within 60 days following the notice pursuant to Article II, section J.4.b., the Department or any other person may bring an action against the proposed change in use in a state or federal court of competent jurisdiction, if a property right, water right, or other interest protected under state law would be adversely affected, or if the proposed change is not in compliance with this Compact.

6. Notice of Change:

a. The United States agrees to notify the state and provide a copy of the final order within 60 days of its entry by a state or federal court of competent jurisdiction resolving any objections to the change in use of a federal reserved water right described in this Compact,

b. The United States agrees to provide the state with notice of completion of the change within 60 days after the completion.

7. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Section III.H. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact, regardless of whether the action is deemed a change in use pursuant to Article II, section J.1.; (2) the initiation of new uses that were completed during the preceding year; and (3) any data and documents generated or received by the National Park Service during the preceding year on measurement of instream flow on a Category 3 or 4 stream.

8. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of: (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact; (2) new permits issued during the preceding year according to the records of the Department; and (3) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to Category 3 or 4 streams.

## ARTICLE III

## WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. All reserved water rights described in this Article are subject to Article V, section A.

A. Big Hole National Battlefield

1. Priority Date

The United States has a priority date of June 29, 1939 for the reserved water rights described in this Compact for BHNB.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of the BHNB as set forth in Table 1. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNB shall include any non-reserved land within BHNB boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1

United States National Park Service

Big Hole National Battlefield Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|---|---|---|
| Visitor center | | |
| Museum | | |
| Maintenance area | | |
| Residences | | |
| Picnic area | | |
| Irrigation | | |
| Total for all use | 7.14 | 50 |

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNB. The United States has a reserved water right for instream flow on the North Fork of the Big Hole River where it flows over the reserved land of BHNB. The reserved water right for instream flow is quantified and defined as follows:

a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNB in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

### TABLE 2

### State Law Based

### Total Current and Future Consumptive Use Rights (cfs)

### Tributary to the Reserved Portion of the

### North Fork of the Big Hole River

| Month | Consumptive Use |
|---|---|
| April | 4.85 |
| May | 23.85 |
| June | 18.70 |
| July | 4.05 |
| Aug. | 1.75 |
| Sept. | 1.35 |
| Oct. | 1.50 |

4. Nothing in this Compact may affect an existing right to divert water from a point within BHNB and transport it for use off BHNB.

B. Bighorn Canyon National Recreation Area

The parties were unable to finalize agreement on quantification of the water rights for BCNRA prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights, and further agree that all other relevant provisions of this Compact apply to a settlement of this water right through this process. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for BCNRA adjudicated in a state or federal court of competent jurisdiction.

C. Glacier National Park

1. Priority Date

The United States has a priority date of May 11, 1910 for reserved water rights described in this Compact for GNP. The United States recognizes that this date is junior to the priority dates for reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and the Blackfeet Tribe of the Blackfeet Indian Reservation.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 3. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at GNP shall include any non-reserved land within GNP boundaries as the boundaries exist on the effective date of this Compact.

TABLE 3

United States National Park Service

Glacier National Park Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|---|---|---|
| North Fork Flathead River Basin | | |
| Station, campground | 4.7 | 70 |
| Backcountry Use | 1.98 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| Middle Fork Flathead River Basin | | |
| McDonald Creek areas | 246.00 | 1720 |
| Middle Fork areas | 0.70 | 10 |
| Backcountry Use | 2.42 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| Saint Mary River Basin | | |
| Northern Border areas | 2.20 | 20 |
| Many Glacier areas | 166.40 | 600 |
| Saint Mary areas | 128.40 | 915 |
| Backcountry Use | 2.02 | |
| Backcountry Patrol Cabins | 1.50 | 40 |
| Two Medicine River Basin | | |
| Two Medicine areas | 6.40 | 70 |
| Backcountry Use | 0.38 | |
| Backcountry Patrol Cabins | 0.19 | 5 |
| Cut Bank River Basin | | |
| Backcountry Use | 0.18 | |
| Backcountry Patrol Cabins | 0.19 | |
| Milk River Basin | | |
| Backcountry Use | 0.02 | |
| GNP TOTAL | 567.80 | |

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Sage, Spruce, Kishenehn, Starvation, Kintla, Red Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, Valentine, Kootenai, Pass, Camp, Cleveland, Street, Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two Medicine, Fortymile, Fortyone Mile, Midvale, Railroad, Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch, Pyramid, Thunderbird and Upper Summit Creeks and Waterton, St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

(a) The United States has a reserved water right for instream flow on the Category 1a streams in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact; and (2) all water rights appurtenant to non-federal land within the boundaries of GNP recognized under state law with a priority date before January 1, 1993. This reserved water right ends at the most downstream point that the stream exits the reserved land of GNP.

(b) In the event all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to GNP, the stream may be reclassified as a Category 1 stream at the request of the United States.

c. Category 4 Streams

i. Identification:

The following streams are designated as Category 4: the North Fork of the Flathead River, the Middle Fork of the Flathead River, Divide, Jule, Rubideau and Wild Creeks.

ii. Instream Flow for the North and Middle Forks of the Flathead River:

The United States has a reserved water right for instream flow on the North and Middle Forks of the Flathead River in the amount of the entire flow of the rivers, less any United States' consumptive use rights described in this Compact provided that, the instream flow water right is subordinate to 1) all water rights recognized under state law with a priority date before January 1, 1993, 2) future consumptive use rights calculated according to Article II up to the limits set forth in Table 4; (3) any use considered non-consumptive as defined by this Compact; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II. This reserved water right ends at the most downstream point that the River forms the boundary of the reserved land of GNP.

### TABLE 4

### State Law Based

### Future Consumptive Use Rights (cfs)

### Tributary to the Reserved Portion of the Flathead River

| Month | North Fork Flathead River | Middle Fork Flathead River |
|---|---|---|
| Jan. | 7.5 | 7.1 |
| Feb. | 7.2 | 6.9 |
| Mar. | 8.9 | 8.1 |
| April | # | # |
| May | # | # |
| June | # | # |
| July | 40.5 | # |
| Aug. | 16.2 | 13.7 |
| Sept. | 11.8 | 9.7 |
| Oct. | 11.8 | 10.6 |
| Nov. | 12.0 | 11.6 |
| Dec. | 9.0 | 9.2 |

# The amount of water available for future consumptive use in these months shall be an amount equivalent to the flow rate for all consumptive uses recognized under state law on December 31, 1992. The amount shall be adjusted to reflect the flow rates in a decree issued by a state or federal court of competent jurisdiction after December 31, 1992. At such time as final decrees are entered in these basins, the Department shall tabulate these rights, insert the appropriate amounts into Table 4, and submit the revised Table to the United States and the state for inclusion in this Compact. Revision of Table 4 to reflect this agreement shall not be deemed a modification of this Compact.

iii. Instream Flow for Divide, Jule, Rubideau and Wild Creeks

The United States has a reserved water right for instream flow on Divide, Jule, Rubideau, and Wild Creeks in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact. This water right ends at the most downstream point that the stream exits or no longer forms the boundary to the reserved land of GNP. This right is subject to the provisions of Article V, section A., and (1) on Divide Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993; and (2) on Rubideau Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993, provided that the use of such right is consistent with federal law.

4. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of GNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United

States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth specifically in the Abstract.

D. Grant Kohrs Ranch National Historic Site

The Grant Kohrs Ranch National Historic Site in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

E. Little Bighorn Battlefield National Monument

The parties were unable to finalize agreement on quantification of the water rights for LBBNM prior to the effective date of this Compact. For the purposes of settlement of the reserved water rights for land administered by the National Park Service in Montana, the parties agree that a water right for instream flow is necessary for the historic purposes of LBBNM. The parties agree to continue to pursue, in good faith, quantification of water rights and further agree that all other relevant provisions of this Compact apply to a settlement of this water right through this process. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for LBBNM adjudicated in a state or federal court of competent jurisdiction.

F. Nez Perce National Historical Park

The Nez Perce National Historical Park in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

G. Yellowstone National Park

1. Priority Date

The United States has a priority date of March 1, 1872 for the reserved water rights described in this Compact for YNP.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of YNP as set forth in Table 5. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 5

United States National Park Service

Yellowstone National Park Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|---|---|---|
| Yellowstone River Basin | | |
| North Entrance | 1.70 | 35 |
| Stephens Creek facilities | 12.00 | 50 |
| TW facilities (Gardiner) | 58.70 | 300 |
| NE Entrance | 15.60 | 50 |
| Backcountry Use | 10.70 | |
| Backcountry Patrol Cabins | 2.00 | 15 |
| Day Use Areas | 2.40 | 6 |
| Gallatin River Basin | | |
| NW Entrance Area | 15.00 | 50 |
| Backcountry Use | 2.80 | |
| Backcountry Patrol Cabins | 0.50 | 10 |
| Day Use Areas | 0.60 | 6 |
| Madison River Basin | | |
| West Entrance | 48.90 | 200 |
| Backcountry Use | 2.80 | |
| Backcountry Patrol Cabins | 0.50 | 10 |
| Day Use Areas | 0.70 | 6 |
| YNP TOTAL | 174.90 | |

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the Gardner River.

ii. Instream Flow:

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

b. Category 2:

i. Identification:

The following streams are designated as "Category 2:"

Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, and Snowslide Creeks.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 2 streams in the amount of the entire flow of the streams, less any consumptive use rights of an agency of the United States recognized under federal or state law. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

iii. Change in Wilderness Designation

In the event that the Congress of the United States repeals the Wilderness designation assigned to the headwaters of an above named Category 2 stream, then, to the extent consistent with the law repealing the Wilderness designation as it pertains to water use, the stream headwatered in the former Wilderness may be reclassified in the appropriate category on request by the state.

c. Category 3:

i. Identification:

The following streams are designated as "Category 3:"

Crevice, Dry Canyon, Slough, and Tepee Creeks.

ii. The United States has a reserved water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use set forth in Table 6 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 6

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of Category 3 Streams

| Month | Crevice Creek | Dry Canyon Creek | Slough Creek | Teepee Creek |
|---|---|---|---|---|
| Jan. | 0.2 | 0.1 | 1.5 | 0.3 |
| Feb. | 0.2 | 0.1 | 1.6 | 0.3 |
| Mar. | 0.3 | 0.1 | 1.9 | 0.4 |
| April | 1.1 | 0.2 | 5.6 | 1.2 |
| May | 3.8 | 1.3 | 19.8 | 4.5 |
| June | 3.4 | 1.2 | 22.4 | 5.3 |
| July | 1.0 | 0.3 | 7.3 | 1.7 |
| Aug. | 0.4 | 0.2 | 2.9 | 0.8 |
| Sept. | 0.4 | 0.1 | 2.3 | 0.6 |
| Oct. | 0.4 | 0.1 | 2.4 | 0.6 |
| Nov. | 0.3 | 0.1 | 2.1 | 0.5 |
| Dec. | 0.2 | 0.1 | 1.8 | 0.4 |

iii. The provisions of Article III, section G.3.c.ii notwithstanding, in the event of a period of low flow such that Crevice, Dry Canyon, Slough, or Teepee Creeks fall below the critical levels of instream flow shown in Table 7 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow is not subordinate to consumptive use water rights recognized under state law with a priority date on or after January 1, 1993.

TABLE 7

Low Stream Flow Levels at which Subordination is Limited (cfs)

| Month | Crevice Creek | Dry Canyon Creek | Slough Creek | Tepee Creek |
|---|---|---|---|---|
| Jan. | 3.8 | 1.1 | 28.9 | 6.5 |
| Feb. | 4.5 | 1.0 | 30.6 | 6.5 |
| Mar. | 5.2 | 1.2 | 35.4 | 7.7 |
| April | 20.2 | 4.7 | 106.4 | 23.7 |
| May | 71.8 | 24.0 | 376.2 | 84.6 |
| June | 63.8 | 22.9 | 425.6 | 100.1 |
| July | 18.7 | 6.6 | 138.7 | 33.2 |
| Aug. | 8.1 | 3.1 | 55.2 | 14.9 |
| Sept. | 7.0 | 2.0 | 44.2 | 10.9 |
| Oct. | 7.1 | 1.9 | 46.0 | 10.8 |
| Nov. | 5.2 | 1.5 | 39.5 | 9.1 |
| Dec. | 3.9 | 1.4 | 34.1 | 8.1 |

d. Category 4:

The following streams are designated as Category 4: Soda Butte Creek within the state, and the Gallatin, Madison and Yellowstone Rivers where they flow within or form the boundary to reserved land of YNP within the state.

i. Soda Butte Creek

(1) The United States has a reserved water right for instream flow on Soda Butte Creek in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to: (a) any water rights recognized under state law with a priority date before January 1, 1993; (b) any future consumptive use rights calculated according to Article II, as long as the limit on total current and future consumptive use set forth in Table 8 has not already been reached or exceeded by the rights protected under subsection (1)(a); (c) any use considered non-consumptive as defined by this Compact; and (d) any use of groundwater not included in the calculation of consumptive use according to Article II.

### TABLE 8

### State Law Based

### Total Current and Future Consumptive Use Rights (cfs)

### Tributary to the Reserved Portion of Soda Butte Creek

| Month | |
|---|---|
| Jan. | 0.3 |
| Feb. | 0.3 |
| Mar. | 0.2 |
| April | 0.1 |
| May | 6.2 |
| June | 17.5 |
| July | 6.4 |
| Aug. | 2.4 |
| Sept. | 0.8 |
| Oct. | 0.7 |
| Nov. | 0.5 |
| Dec. | 0.3 |

(2) The provisions of Article III, section G.3.d.i.(1) notwithstanding, in the event of a period of low flow such that Soda Butte Creek falls below the critical levels of instream flow shown in Table 9 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow shall be subordinate only to: (a) any water right for domestic use of 35 gpm or less and to any water right held by an incorporated or unincorporated municipality, recognized under state law with a priority date before January 1, 1993; (b) any use considered non-consumptive as defined by this Compact; and (c) any use of groundwater not included in the calculation of consumptive use according to Article II.

(3) In the event that the Congress of the United States repeals the Wilderness designation assigned to the land over which Republic and Hayden Creeks and two unnamed tributaries to Soda Butte Creek flow in Wyoming, or otherwise makes water from such tributaries available for appropriation in Wyoming, the state may seek modification of Article III, section G.3.d.i.(2). of this Compact as provided in Article VI, section A.2.

## TABLE 9

### Low Stream Flow Levels at which Subordination is Limited (cfs)

### Soda Butte Creek

| Month | Flow |
|---|---|
| Jan. | 5.4 |
| Feb. | 5.1 |
| Mar. | 4.0 |
| April | 1.7 |
| May | 116.9 |
| June | 332.5 |
| July | 120.7 |
| Aug. | 46.4 |
| Sept. | 15.3 |
| Oct. | 14.2 |
| Nov. | 9.3 |
| Dec. | 6.3 |

ii. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 10 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

### TABLE 10

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of these Rivers

| Month | Gallatin River | Madison River | Yellowstone River |
|---|---|---|---|
| Jan. | 3.1 | 19.9 | 41.2 |
| Feb. | 3.1 | 19.7 | 40.6 |
| Mar. | 3.5 | 20.0 | 44.5 |
| April | 9.8 | 24.3 | 73.7 |
| May | 39.3 | 40.9 | 284.7 |
| June | 48.0 | 40.2 | 556.7 |
| July | 15.7 | 24.7 | 335.0 |
| Aug. | 5.8 | 21.4 | 156.5 |
| Sept. | 4.4 | 21.1 | 96.0 |
| Oct. | 4.6 | 21.4 | 75.0 |
| Nov. | 4.2 | 21.0 | 58.4 |
| Dec. | 3.8 | 20.4 | 47.2 |

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

H. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Park reservations. The United States, may as part of its reserved water right, divert water for fire suppression at all of the National Park Service Units as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for instream flow.

## ARTICLE IV

## YELLOWSTONE CONTROLLED GROUNDWATER AREA

A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

The parties understand that knowledge of the interrelationship of hydrothermal features within YNP, the hydrothermal system that supports those features, and groundwater in surrounding areas of Montana will benefit from increased study. The parties agree that the hydrothermal features of YNP are a unique and irreplaceable resource and represent one of the few undisturbed hydrothermal systems in the United States.

This Compact does not recognize a reserved water right to groundwater outside the boundaries of the reserved land of YNP. However, the parties agree that restrictions shall be placed on the development of groundwater adjacent to YNP to the extent necessary to prevent adverse effect on the reserved water right to groundwater within YNP. The parties agree that the goal of establishment and administration of the Yellowstone Controlled Groundwater Area shall be to allow no impact to the hydrothermal system within the reserved land of YNP.

B. Findings

Ratification of this Compact by the Montana legislature constitutes a finding that:

1. unrestricted use of groundwater adjacent to Yellowstone National Park is likely to interfere with the water rights reserved by the United States in 1872, 1929, 1930, and 1932, for the preservation of hydrothermal features within YNP;

2. prevention of adverse effect on the United States' reserved water right to groundwater within the reserved land of YNP is a benefit to the state and to the United States;

3. the public interest and welfare requires that a corrective control be adopted to regulate groundwater development adjacent to YNP; and

4. the cooperative state-federal management and oversight established by this Article is an effective means to achieve protection of the reserved water right to groundwater necessary to preserve the hydrothermal system within the reserved land of YNP.

C. General Provisions

1. Establishment: The Yellowstone Controlled Groundwater Area or "Area" is hereby established and shall be defined and administered according to this Compact.

2. Funding: The United States agrees that it receives substantial benefit from the establishment and administration of the Yellowstone Controlled Groundwater Area, and that the national and international public benefit extends far beyond the boundaries of the state. Thus, the United States agrees

that the relatively small population of the state should not bear the entire cost of protection of the United States' reserved water right. To this end, the Department of the Interior agrees, subject to appropriations by Congress, to reimburse the state for the expense of establishment, administration and enforcement of the Yellowstone Controlled Groundwater Area by the Department; to fund the inventory, sampling, reporting and database management by the Bureau; and, except as provided in Article IV, section J.1.c., to fund the administrative costs and the cost of any study or any other necessary activity pursuant to this Article by the Technical Oversight Committee.

3. Implementation Contingent on Funds: Such funding shall be accomplished pursuant to the terms and conditions of a separate agreement which shall incorporate terms and conditions necessary to specify the activities to be funded and appropriate cost and accounting principles consistent with generally applicable guidelines for federal funding in similar circumstances, and consistent with the terms of this Compact, including, but not limited to, the enumeration of state expenses to be reimbursed in Article IV, section C.2. The state is relieved of its obligation to establish, administer, inventory, sample and maintain a database on the Controlled Groundwater Area in the absence of a funding agreement and the provision of the funds specified therein. If the state is relieved of its obligation to implement all or a portion of this Article, all other terms of this Compact shall remain in effect, including all reserved water rights established herein. Such agreement may be amended, extended, renewed or terminated pursuant to its terms.

4. Interim Measures:

The state agrees that the following interim measures shall apply from the effective date of this Compact until the receipt of funds from the United States or December 31, 1995, whichever occurs first. The United States agrees to reimburse the state for the cost of the interim measures, subject to the appropriation of funds by Congress. The parties agree that, even if funding is not received by December 31, 1995 and interim measures are suspended, the state and the Department of the Interior will continue to recommend federal funding.

a. The Department shall issue the notice required by Article IV, section F.

b. All permits issued within this time period within the Area shall be conditioned on appropriation of water of less than 60°F., measured at the wellhead.

c. The Department shall require that each applicant for a permit or person filing a notice of completion for issuance of a certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

d. The Department shall not issue a certificate of water right for the appropriation of groundwater with a temperature of 60°F. or more within the Area during this time period. The Department shall order temporary abandonment of any well in the Area for which a conditional permit was issued or notice of completion for issuance of a certificate of water right was filed within this time period that produces groundwater with a temperature of 60°F. or more, measured at the wellhead. Temporary abandonment shall be according to the rules of the Montana Board of Water Well Contractors.

e. Following receipt of funds from the United States, the Department shall notify the applicant that the appropriation is subject to the terms of this Compact and shall proceed according to the procedures set forth in this Article. If funds are not received by December 31, 1995, the Department may remove the order of temporary abandonment and remove the condition on the permit or issue the certificate of water right pursuant to state law. The Department shall continue to require that each applicant for a permit or certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

5. Additional Studies: In addition to appropriations necessary to implement this Article, the state and the National Park Service agree to recommend federal funding for a baseline study of hydrothermal features in YNP and within the Controlled Groundwater Area, for continued monitoring of these features, and for geologic and geophysical studies including, but not limited to, geologic mapping, and monitoring of microearthquakes and subsidence in and adjacent to YNP. Implementation of this Article is not contingent on such appropriation.

6. Access for Studies: Consistent with the purposes of YNP, the United States agrees to allow reasonable access to and across YNP to the extent necessary to accomplish the data collection authorized by this Article or additional studies recommended pursuant to Article IV, section C.5. In seeking access, the Department or Bureau shall comply with the provisions of Article II, section I.3.

7. Effect of Modification of Area: It is the intent of the parties that the initial boundaries of the Area set forth in Article IV, section D. and Appendix 2, and initial restrictions set forth in Article IV, section E. may be modified pursuant to Article IV, section J., or with respect to a single appropriation pursuant to Article IV, section G.2.c. and shall not be deemed to be a modification of this Compact. Any other modification of this Article shall be considered a modification of this Compact and is subject to the terms of Article VI, section A.2.

8. It is the intention of the Department of the Interior to protect the hydrothermal resources of Yellowstone National Park through the system established by Article IV.

a. The National Park Service agrees, consistent with 43 U.S.C. § 666, that enforcement will not be sought against the holder of a water right recognized under state law with a priority date on or after January 1, 1993, unless the NPS has, in the first instance, sought enforcement through the state under the terms of this Compact.

b. Notwithstanding the preceding subparagraph, if the National Park Service, in its judgment, determines that circumstances warrant, nothing in this Compact prohibits the United States from petitioning a state or federal court of competent jurisdiction for injunctive or declarative relief. Nothing in this Compact shall alter the courts' application of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.

c. As to an action against the holder of a right to withdraw groundwater recognized under state law with a priority date before January 1, 1993, the United States agrees that this Compact shall not be used or relied upon as evidence to show that: (1) a reserved water right of the United States exists appurtenant to any land other than the reserved land of YNP; or (2) the priority date associated with any portion of reserved land of YNP is other than the date on which that portion of land was actually reserved.

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

The initial boundaries of the Yellowstone Controlled Groundwater Area and Subareas are defined to include the area in the State of Montana located within the geographic boundaries shown on Appendix 2. Appendix 2 is hereby incorporated in this Compact by this reference as though set forth here in full.

1. Subarea I:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea I shall include all of the area in Montana North and West of YNP within the boundary delineated as subarea I on Appendix 2.

2. Subarea II:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea II shall include all the area in Montana North and West of YNP within the boundary delineated as subarea II on Appendix 2.

E. Initial Restrictions on Groundwater Development within the Yellowstone Controlled Groundwater Area

Until the initial boundaries or restrictions set forth in this Article are modified pursuant to Article IV, section J., the restrictions set forth in this section shall apply to groundwater appropriations within the Area with a priority date on or after January 1, 1993. Such appropriations shall follow the procedural requirements of Article IV, section G.

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article applicable to such appropriations shall be those providing for inventory and sampling of current use set forth in Article IV, section H. Groundwater appropriations with a priority date before January 1, 1993 are subject to applicable state law including, but not limited to, issuance of a certificate of water right following final adjudication of existing water rights. Nothing herein waives the right of the United States to seek protection of its reserved water right for protection of the hydrothermal features within the reserved

land of YNP from groundwater appropriations with a priority date before January 1, 1993 in a state or federal court of competent jurisdiction, provided that the limitation on use of this Compact in an action by the United States against any such appropriator set forth in Article IV, section C.8.c. shall apply.

2. The Department shall not issue a permit to appropriate groundwater that is hydrothermal discharge water as defined by this Compact unless either: (1) modification occurs pursuant to Article IV, section J. altering pertinent boundaries or restrictions; or (2) an application is approved pursuant to Article IV, section G.2.c. Unless modification occurs pursuant to Article IV, section J., the Department shall not limit an appropriation of groundwater that is not hydrothermal discharge water unless required to do so by Article II and III of this Compact or any other provision of state law.

F. General Notice of Establishment of the Yellowstone Controlled Groundwater Area

1. Notice: Within 120 days after the effective date of this Compact and within 60 days of any decision by the Department to modify the Area as set forth in Article IV, section J., the Department shall publish a notice of establishment or modification of the Area setting forth:

a. the description by legal subdivisions of all lands included in the controlled groundwater area;

b. the purpose of the controlled groundwater area or modification; and

c. the permit requirements, restrictions, inventory, sampling and monitoring applicable within each subarea.

2. Publication and Service: Such notice shall be published in a newspaper of general circulation in the county or counties in which the Area is located. The Department shall also serve a copy of the notice by mail on each well driller licensed in Montana whose address is within any county in which any part of the Area is located; on each well driller known by the Department to operate in the Area; on the Montana State Bureau of Mines and Geology; on the mayor or chair of the governing body of each county or incorporated municipality located in whole or in part within the Area; and on the United States. The Department may also serve notice on any other person or state or federal agency that the Department believes may be interested in or affected by the proposed designation or modification of the Area. A copy of the notice shall be mailed to each person's last known address according to the records of the Department.

G. Appropriations of Groundwater within the Yellowstone Controlled Groundwater Area With a Priority Date on or After January 1, 1993

1. Appropriation of Groundwater within the Area with a Priority Date on or after January 1, 1993 and before the Effective Date of this Compact:

The initial restrictions on groundwater development set forth in Article IV, section E. apply to appropriations of groundwater with a priority date on or after January 1, 1993 and before the effective date of this Compact provided that the following procedural requirements are met:

a. Within 120 days after the effective date of this Compact or the receipt of adequate funds from Congress, whichever occurs later, the Department shall provide the United States with notice of all groundwater appropriations within the Area that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

b. Subsequent to the notice provided for in Article IV, section G.1.a. and up to 120 days following mailing of the report on inventory provided in Article IV, section H.1.b.iii., the United States may provide the Department with credible information on any groundwater appropriation within the Area with a priority date on or after January 1, 1993 and before the effective date of this Compact, showing that the appropriation is of water with a temperature of 60°F. or more.

c. If the United States provides the information set forth in Article IV, section G.1.b., the Department shall, within 60 days of receipt of the information, issue an order requiring that the appropriator comply with the applicable restrictions. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order.

d. If the appropriator enters an appearance to contest the order, the Department shall: (1) issue an order staying use of the appropriation pending final decision on the matter by the Department; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated, provided that in such a proceeding the United States has the burden of proving by a preponderance of the evidence that the appropriation is of groundwater of 60°F or more. If the United States meets this burden, the appropriator shall comply with procedures and restrictions set forth in Article IV, section G.2.

2. Appropriations of Groundwater with a Priority Date after the Effective Date of this Compact

a. General Provisions

i. All groundwater appropriations within the Area after the effective date of this Compact are subject to this Article. Applications and registration for a permit for the appropriation of groundwater within the Area after the effective date of this Compact shall include a statement of whether the proposed use requires water with temperature of 60°F. or more. In addition, the Department shall not issue a permit for appropriation of groundwater unless the requirements of Articles II and III are met, if applicable.

ii. A permit issued pursuant to this Article shall provide that:

(1) The permittee shall install a device to meter total volume of water use in compliance with rules promulgated by the Department pursuant to Article IV, section I.5. The Department shall specify the metering method and location of installation. On or before January 15 of each year, the permittee shall report annual use to the Bureau at: Montana Bureau of Mines and Geology, Main Hall, Montana Tech, Butte MT, 59701. Meters shall be made available to the permittee at the Department of Natural Resources and Conservation Regional Water Rights Office at: 111 North Tracy, Bozeman, Montana, 59715. Meters shall be acquired for distribution by the Department of Natural Resources and Conservation Regional Water Rights Office as part of the inventory and sampling program authorized by Article IV, section I.

(2) The Department has the authority to modify or revoke a permit if the provisions listed below are applicable, and all other administrative or judicial

enforcement authority provided under Title 85, part 2, of the Montana Code Annotated applies to this part. The Department may exercise its enforcement authority if (1) the appropriator fails to allow access for sampling provided for in Article IV, section H.; (2) the character of the groundwater produced changes such that a restriction applies pursuant to this Article; (3) new restrictions imposed pursuant to Article IV, section J. are applicable; or (4) the appropriator violates any other provision of this part.

(3) A permit to appropriate hydrothermal discharge water may include limits and conditions on appropriation including but not limited to (a) limits on total withdrawal by day, month or year; (b) a requirement to adhere to a system of rotation of use within the Area; and (c) a provision adjusting the total withdrawal from two or more wells in the area used by the same appropriator.

(4) A permit to appropriate hydrothermal discharge water shall include any applicable monitoring requirement recommended by the Working Group Report or recommendations by the TOC superseding that report unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate.

iii. If, subsequent to the effective date of this Compact, modification pursuant to Article IV, section J. removes the restrictions set forth in Article IV, section E., the monitoring recommended by the Working Group Report or as superseded by the TOC shall continue to apply unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate, according to the criteria in the Working Group Report or as superseded by the TOC.

b. Appropriations of Groundwater with a Temperature of less than 60°F

i. Registration and Application

(1) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the Department that shall include, but not be limited to, a statement of whether the proposed use requires water with temperature of 60°F. or more, the well location, and intended use and shall comply with the provisions of Article II and III, if applicable. The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing.

(2) An applicant for a permit to appropriate groundwater of greater than 35 gpm or 10 acre-feet per year after the effective date of this Compact, shall comply with existing state law for permits to appropriate water and the limits on groundwater appropriations set forth in Articles II and III, if applicable. The Department may issue an interim permit for the proposed appropriation to an applicant seeking an appropriation for a use that does not require water with a temperature of 60°F. or more if the requirements of this section are met.

ii. Drilling

(1) On filing a proper registration form, an applicant for an appropriation of 35 gpm or less, not to exceed 10 acre-feet per year, with a proposed use that does not require water with a temperature of 60°F. or more may complete the

proposed well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

(2) Upon issuance of an interim permit, an applicant for an appropriation of greater than 35 gpm or 10 acre-feet per year may drill the well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

iii. Within 60 days of drilling of the well, the applicant or registrant shall provide the Department with a well log on a form provided by the Department. The well log shall include well location to the quarter-quarter-quarter-quarter section; ground elevation at the wellhead; well depth; water level; flow rate or maximum pump rate; water temperature measured at the wellhead; and specific conductance of the water produced using a device provided by the Water Resources Regional Office.

iv. The Department shall forward a copy of the well log to the United States and to the Bureau on receipt.

v. Following receipt of the well log, the Department may inspect the well at a reasonable hour of the day to verify the information on the well log report. The United States may request to accompany the inspector as set forth in Article II, section I.4.

vi. The United States has 60 days from the mailing of the report to file an objection setting forth credible information that the appropriation is of groundwater with characteristics to which restrictions established pursuant to this Article apply.

vii. The Department may issue a permit to appropriate if: (1) the well log and any verification confirm that the appropriation is of water to which no restrictions pursuant to this Article apply; and (2) all other requirements of state law and this Compact have been met, unless the United States files an objection pursuant to Article IV, section G.2.b.vi. If the well log or verification indicate appropriation of water to which restrictions pursuant to this Article apply or if the United States files a proper objection, the applicant shall be subject to the provisions of Article IV, section G.2.c.

viii. If a permit is issued, the applicant or registrant may complete the appropriation and apply the water to beneficial use.

ix. Within 60 days of completion of the appropriation, the permittee shall file a notice of completion with the Department pursuant to state law.

c. Appropriation of Groundwater with a Temperature of 60°F. or Greater

If an application or registration for a permit within the Area is for a use requiring groundwater with a temperature of 60°F. or more or the well log or any verification indicates water of 60°F. or more, the following provisions apply:

i. Subarea I - groundwater with a temperature of 85°F. or more:

Groundwater of 85°F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate water with a temperature of 85°F. or more in Subarea I, unless the appropriation is consistent with modification of restrictions pursuant to Article IV, section J., or pursuant to the procedures set forth below. An application for an appropriation that proposes to do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact is not subject to these restrictions.

(1) The application shall set forth credible information that the proposed appropriation does not include contribution by hydrothermal discharge water;

(2) Within 30 days of receipt of the information the Department shall seek review of the application by the TOC.

(3) The TOC shall review the report to determine if the appropriation can take place without adverse effect on the hydrothermal system within YNP. In performing the review, the TOC shall utilize the best available scientific information. The TOC shall resolve doubt in favor of protection of the hydrothermal system within YNP.

(4) Within 60 days of the request by the Department, the TOC shall recommend, in a report to the Department, if, and under what conditions the appropriation could be allowed without adverse effect on the hydrothermal system within YNP. The TOC may recommend limits or conditions on the proposed appropriation that, in the opinion of the TOC, would allow the development while protecting the hydrothermal system within YNP. The TOC shall also provide the Department with a dissenting report pursuant to Article IV, section J.1., if applicable.

(5) On receipt of the report or reports, the Department shall provide a copy to the United States and the applicant and shall schedule a hearing no less than 60 and no more than 90 days from mailing of the report.

(6) The hearing shall proceed as a contested case under the Montana Administrative Procedure Act, Title 2, Chapter 4 of the Montana Code Annotated.

(7) The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case.

(8) The report and recommendations provided by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The dissenting report, if any, may be used as rebuttal evidence.

(9) If the report recommends denial of the application, the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or until the department determines that the well should be permanently abandoned.

(11) Within 30 days of an order by the Department pursuant to this section, appeal on the record may be made to a state or federal court of

competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ii. Subarea I - groundwater with a temperature of 60°F. or more, but less than 85°F:

Appropriation of groundwater with a temperature of 60°F. or more, but less than 85°F. in subarea I is subject to the following provisions.

(1) The applicant shall provide credible information that the water meets the following criteria:

(a) the proposed appropriation will do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact, or

(b) the proposed appropriation meets all of the following criteria:

(i) The water temperature is the result of the normal thermal gradient of the earth plus the mean annual air temperature at the site plus 14°F. Unless modified by the TOC, the Department shall use the following equation to estimate the water temperature expected:

(0.01646 x the depth of the production zone in feet) + 59.3°F.

If the temperature measured at the wellhead is equal to or less than the temperature estimated by this equation, the appropriation meets this criteria.

(ii) the concentration of soluble chloride is less than ten parts per million; and

(iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of Mines and Geology, Special Publication 54, March 1971.

(2) The Department may issue a permit to appropriate groundwater with a temperature of 60°F or more, but less than 85°F. to an applicant that meets the above criteria and is in compliance with the provisions of Article IV, section G.2.c. unless (a) restrictions are consistent with modification pursuant to Article IV, section J.; or (b) the United States objects and shows by a preponderance of the evidence that the criteria have not been met or, for another scientific reason, the temperature is the result of contribution by hydrothermal discharge water.

(3) If the applicant fails to meet the above criteria or the United States meets its burden, the applicant shall comply with the provisions of Article IV, section G.2.c.i. for water or 85°F or more.

(4) The three criteria set forth in Article IV, section G.2.c.ii.(1)(b) may be modified on recommendation by the TOC.

iii. Subarea II:

(1) Groundwater of 85°F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working

Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

(2) An applicant who encounters groundwater of 60°F. or more but less than 85°F. shall comply with the provisions of Article IV, section G.2.c.ii., provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

3. Change in Character of Groundwater: Within 60 days of the receipt of information indicating a change in the character of the groundwater appropriated under a permit issued in the Area on or after January 1, 1993 that indicates the production of groundwater for which a restriction applies, the Department shall issue an order requiring that the appropriator comply with the limitations on appropriation of hydrothermal groundwater authorized in this Article. The order shall take affect 60 days following the date issued unless the appropriator appears to contest the order. If the appropriator appears to contest the order, the Department shall set a date for a hearing and proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, title 2, Chapter 4, of the Montana Code Annotated, provided that the appropriator shall have the burden to prove by a preponderance of the evidence that the water produced does not meet the criteria to which restrictions apply.

H. Inventory and Sampling of Groundwater

1. Initial Inventory

All groundwater appropriations in the Area with a priority date before the effective date of this Compact shall be inventoried as set forth below:

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever occurs later, the Department shall serve notice by mail on each person or public agency known from an examination of the records in the Department's office to be an appropriator of groundwater with a priority date before the effective date of this Compact. The notice shall set forth:

i. the contents of the notice required in Article IV, section F.; and

ii. a statement that within 3 years from the date of notice the Bureau may visit the wellsite to measure temperature; flow rate or maximum pump capacity; water level, or pump level if the well cannot be entered; and may collect a water sample for additional analysis.

b. Inventory

i. Within 3 years of notice pursuant to Article IV, section H.1.a., a representative of the Bureau shall inventory each well drilled pursuant to an appropriation recognized under state law with a priority date before the effective date of this Compact. The inventory shall be considered complete when the Bureau has inventoried substantially all of the wells that can be located and accessed with reasonable diligence. The inventory shall include, but not be limited to, the following:

(1) well location to the quarter-quarter-quarter-quarter section;

(2) ground elevation at the wellhead;

(3) flow rate or maximum pump capacity;

(4) water level, or pump level if the well cannot be entered;

(5) water temperature at the wellhead;

(6) specific conductance of the water at the wellhead;

(7) chloride content of the water at the wellhead;

(8) water samples from a representative number of wells selected by the Bureau. The water samples shall be analyzed by the Bureau, or by a qualified lab contracted by the Bureau. Samples shall be analyzed for chemistry, and, if applicable, gas and isotopes. Choice of analyses shall be at the discretion of the Bureau using the Working Group Report or a report by the TOC superseding the Working Group Report as a guideline. The Bureau may consult with the TOC concerning well selection and analysis; and,

(9) any additional information deemed necessary for implementation of this Article by the Bureau in consultation with the TOC.

ii. The inventory shall be prioritized to complete Subarea I first.

iii. Within 6 months of completion of the inventory in each Subarea, the Bureau shall provide a report to the Department, the TOC, and the United States, verifying that the inventory is complete and setting forth the data obtained in the inventory. The report shall be made available to the public by the Department. In addition, the Bureau shall maintain an adequate database pursuant to Article IV, section H.2.

2. Sampling Program and Database

a. Following the initial inventory of all current groundwater appropriations in the Area provided for in Article VI, section H.1., the Bureau shall sample wells selected in consultation with the TOC and at a frequency determined in consultation with the TOC. The wells may include appropriations made prior to, on or after January 1, 1993. The number of wells sampled and the analyses performed shall be as determined by the Bureau in consultation with the TOC. Until superseded due to recommendation by the TOC, the Working Group Report shall be used as a guideline in making this determination. Within 6 months of the completion of each inventory and sampling program, the Bureau shall provide the Department, the TOC and the United States with a report on the results.

b. The Bureau shall maintain an adequate database on the Yellowstone Controlled Groundwater Area which shall include, at a minimum, analyses of water chemistry, temperature, well depth, well capacity and well location.

c. The United States agrees to provide an annual report to the Bureau for incorporation into the database on the water chemistry, temperature and flow rate of any well in use or spring sampled in the portion of YNP within the state, and may include such information for any well or spring in the portion of YNP outside the state.

d. The information in the database shall be available to the public through the Natural Resources Information System, currently located at 1515 E. Sixth Avenue, Helena, Montana 59620-1800.

I. Administration of the Yellowstone Controlled Groundwater Area

1. The Yellowstone Controlled Groundwater Area established by this Compact shall be administered pursuant to applicable state law and the terms of this Compact.

2. In addition to the requirements imposed by state law, the Department shall provide the United States with notice of any application or registration for a permit to appropriate groundwater within the Area in the same manner and time as required by state law for notice to groundwater appropriators in a controlled groundwater area.

3. The United States may be an objector to any application or registration for a permit to appropriate groundwater or in a hearing for modification of a permit to appropriate groundwater within the Area pursuant to the provisions of Article IV, section G.

4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.

5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto. In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

J. Modification of the Yellowstone Controlled Groundwater Area

1. Technical Oversight Committee: Establishment and Authority

a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60°F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.

b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:

(i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and

(ii) A judge of the First Judicial District in Helena shall fill the vacancy by selecting a member from each set of nominations.

c. Each member shall serve a five-year term and shall be eligible for reappointment. Expenses of the members shall be born by the entity appointing the member. The per diem or salary, and travel expenses of the three members-at-large shall be born equally by the United States and the state, subject to the availability of funds. All other expenses of the TOC shall be born by the United States subject to Congressional appropriation as set forth in Article IV, section C.

d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to Article IV, section J; (2) review of an application to appropriate groundwater with a temperature of 60°F. or more; and (3) removal of any of the criteria specified in Article IV, section G.c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

e. The TOC shall:

i. review the boundaries of the Area and the Subareas;

ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;

iii. assess the cumulative impact of all development in the Area;

iv. review changes in the groundwater and hydrothermal systems revealed by inventory and analyses done by the Bureau, and any other pertinent scientific evidence;

v. review new scientific evidence pertinent to the Area;

vi. consult with the Bureau or the Department on request;

vii. present evidence and make recommendations to the Department in accordance with Article IV, section J.2.

viii. review applications for a permit to appropriate groundwater on request by the Department as set forth in Article IV, section G.2.c.; and

ix. take any additional action necessary to implement this Article.

f. The Department and the Bureau shall provide the TOC with all information in their records regarding appropriations of groundwater within the Area including reports required by this Article.

g. The initial review shall take place within 1 year of the receipt of the inventory report done by the Bureau pursuant to Article IV, section H. Subsequent reviews shall take place every 5 years following the initial inventory or following the issuance of 75 permits to appropriate water within the Area by the Department, whichever occurs first. Additional review shall also take place on request by the United States or the state.

h. Within 6 months of initiation of a review, the TOC shall provide a report of the review, including any recommendation for modification, and a dissenting report, if any, to the Department and the United States. Recommendations shall be based on a determination by a supermajority of the entire TOC that the modification is necessary to prevent adverse effect to the hydrothermal system within the reserved land of YNP, or that modification may be made without the threat of adverse effect on the hydrothermal system within the reserved land of YNP. The recommendation shall be made in good faith and based on scientific evidence including, but not limited to, the following:

i. in the case of extension of boundaries, the criteria set out in the Working Group Report for designation of the boundary of the Area to be enlarged is found to exist within the proposed extension;

ii. the cumulative effect of groundwater development within the Area or a portion of the Area has resulted in declining hydraulic head and modification of boundaries or restrictions are necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iii. changes in groundwater revealed by the inventory and sampling program are such that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iv. scientific evidence indicates that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

v. based on scientific evidence, restrictions can be removed or boundary modifications made without the threat of adverse effect to the hydrothermal system within the reserved land of YNP.

2. Modification Pursuant to Review

a. Within 60 days of mailing of the report in Article IV, section J.1.h., and if (1) the TOC recommends modification; (2) the United States, state or a person with property or water rights within the Area petitions for a hearing; or (3) a person with an interest that would be adversely affected by the recommendation, petitions for a hearing, the Department shall provide for notice of a hearing pursuant to state law.

b. The Department shall follow the rules for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated. In addition, the Department shall apply the following provisions:

i. The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case. The hearing officer shall also hear any oral and written scientific evidence presented by the state, the United States, any applicant for a permit to appropriate who has requested review, and any person with property or water rights in the Area, or an interest that would be adversely affected by the recommended modification.

ii. The scientific evidence and recommendations presented in the report by the TOC have a rebuttable presumption of validity for the purposes of

Article IV. The Department shall adopt the recommendations of the TOC unless the recommendation by the TOC is refuted by clear and convincing scientific evidence. The dissenting report of the TOC, if any, may be used as rebuttal evidence.

iii. The Department shall issue an order stating findings of fact and conclusions of law.

c. Within 30 days of an order by the Department, a person aggrieved by the order may appeal on the record to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

## ARTICLE V

## GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member. The relationship between the water rights of the National Park Service described herein and any rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member shall be determined by the rule of priority.

2. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the National Park Service. The exercise of a water right of the United States, if any, to water for a consumptive use on land administered by the United States Forest Service upstream of a water right to instream flow described in this Compact shall be allocated from the United States' share for instream flow, not the state's share for consumptive use.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the National Park Service, and does not affect the water rights of any other federal agency.

D. Use of Water Right

Except as otherwise provided in this Compact, the rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land.

E. Appropriation Pursuant to State Law

Nothing in this Compact may prevent the United States from seeking a permit to appropriate water under state law for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that, no such use may be included in the calculation of total current or future consumptive use rights allocated to use pursuant to state law by this Compact, and provided further that, a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to general provisions of state law as provided in Article II, section J.2.b.

F. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

G. Severability

Except as provided in Article IV, the provisions of this Compact are not severable.

H. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

## ARTICLE VI

## FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Except as provided in Article IV concerning the appropriation of funds, attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 3 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections B., D., E, and F., the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to seek enactment of legislation and to recommend appropriation of federal funds necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ______ day of ________________, 19__.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

FOR THE UNITED STATES

**History: En. Sec. 1, Ch. 635, L. 1993; Sec. 85-2-706, MCA 1993; redes. 85-20-401 by Code Commissioner, 1994.**

**85-20-402. Statutory appropriation of federal funds.** (1) There must be created those accounts that are necessary within the federal special revenue fund established under 17-2-102 for the purposes of this part.

(2) Federal funds deposited in the accounts and interest and earnings on the accounts are statutorily appropriated, as provided in 17-7-502, and must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

(a) establishment, administration, and enforcement of the Yellowstone controlled ground water area;

(b) inventory, sampling, reporting, and data base management;

(c) provision for administrative costs and the cost of any study or any other necessary activity by the technical oversight committee; and

(d) any other necessary activity pursuant to this part.

**History: En. Sec. 2, Ch. 635, L. 1993; Sec. 85-2-707, MCA 1993; redes. 85-20-402 by Code Commissioner, 1994.**

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